

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

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 183 of 2012

Ruitu Mahato @ Ranjit Mahato

Vs.

The State of West Bengal

For the appellant

: Mr. Tapan Dutta Gupta,
: Mr. Kashiswar Ghosal.

For the State

: Mr. Pravas Bhattacharyya,
: Mr. M.F.A. Begg.

Hearing concluded on: 31/03/2023

Judgment on: 06/09/2023

Rai Chattopadhyay, J.

1. The present appeal has been filed in order to challenge the judgment and order of conviction dated 20.01.2012 of the Additional District & Sessions Judge, Fast Track, 3rd Court at Purulia, in Sessions Trial No. 08/08, under Section 324 of the Indian Penal Code.
2. The case started with lodging of FIR on 25.04.2007 alleging an incident of assault, grievous hurt and attempted murder, committed on the same date. The FIR was registered as Bagmundi P.S Case no. 10/07 dated 25.04.2007 under Section 324/326/307/506 of Indian Penal Code.

3. The investigation was proceeded with and ultimately charge sheet was submitted against the present appellants.
4. The Sessions Court framed charges against him on 17.01.2008 under Sections 326 and 307 of the IPC and the trial commenced. Ultimately by dint of the afore stated judgment the trial Court has come to the finding of guilt of the present appellant, however under Section 324 of the IPC and convicted him. It has further ordered that the appellant/convict should suffer rigorous imprisonment for 1 year and pay fine of Rs. 2000/- to the victim, in default of which he was to suffer further rigorous imprisonment for 1 month more.
5. Being aggrieved with the said judgment and order of sentence the appellant has preferred the instant appeal.
6. The appellant's case is substantially based on the fact that there are certain glaring discrepancies in the prosecution's evidence. According to the learned Advocate for the appellant, those discrepancies should have prompted the trial Court to repose serious suspicion as regards the truthfulness of the evidence, which the trial Court has erred to consider. It has been pointed out that no seizer of the offending weapon is a vital lacuna in the investigation which would render the prosecution case as flawed, though the trial Court has also failed to consider this aspect. According to Mr. Tapan Dutta Gupta, Ld. Advocate for the appellant, the other fatal piece of fact for the prosecution's entire case would be non disclosure of the name of the assailant, by the victim, at the very first instance, when he made his statement before the doctor. This would, according to Mr. Dutta Gupta, pose serious doubt as regards the involvement of the present appellant in the commission of the alleged act and also that there would be sufficient scope for the Court to believe that appellant's implication might be false and manipulated.

7. On the premises as above Mr. Dutta Gupta has prayed on behalf of his client that the appeal may be allowed, setting aside the impugned judgment of the trial Court as afore stated.
8. The State would very naturally deny and dispute the contentions, submissions and arguments made on behalf of the appellant as above. Mr. Pravas Bhattacharyya who is representing the State has pointed out to the fact that the victim as well as all the witnesses who though are not eye witnesses but attained the victim immediately after commission of the alleged assault and grievous hurt, have unequivocally and specifically depose regarding of the involvement of the present appellant in assaulting the victim with a sharp cut weapon. According to Mr. Bhattacharyya, in view of such consistent evidence produced by the prosecution there is no scope of any doubt regarding proof of the facts relevant. The discrepancies pointed out on behalf of the appellant have been addressed as minor discrepancies which the trial Court could ignore and is said to have rightly ignored. Mr. Bhattacharyya submits that the judgment of the trial Court is just, legal and proper and would not warrant any interference, as prayed for.
9. The point on which this Court would adjudicate in this appeal is whether or not the prosecution by providing sufficient, cogent, consistent and believable evidence, has been able prove the alleged guilt of the present appellant to the standard of beyond scope of all reasonable doubt.
10. The FIR being Bagmundi P.S Case No. 10/07 dated 25.04.2007 speaks of an incident to have happened at 7.00 a.m in the morning on the same date. The informant is the relative of the victim though not an eye witness. It is stated in the FIR that when the victim namely Dinabandhu was about to start journey on his motorcycle from in front of his house, the present appellant attacked him from his back. With the aid of sharp

cut weapon namely "Tangi", the appellant assaulted on his head and when the victim fell down at the impact of the first assault, several subsequent blows were hurled on his back. The informant says that daughter of the victim was an eye witness of the incident. As she raised noise, people from surroundings immediately assembled there for the help of the victim. According to the FIR before that however, the assailant run away from the place. The informant also writes that the victim informed all the persons assembled there about the present appellant to be the assailant.

11. In this trial excepting the victim himself, no other witness has been produced to be the eye witness of the alleged incident. P.W 1, P.W 2, P.W 3 and P.W 9, all of whom are the village neighbours of the victim, are post occurrence witnesses. Their evidence however is consistent to the effect that after hearing the hue and cry, all of them rushed to the place of occurrence and found the victim there, having suffered injury and bloodshed. All these witnesses have stated that at that point of time only, all of them came to know from the victim himself that the present appellant was the perpetrator of assault.

12. The daughter of the victim, who has been named in the FIR to be the eye witness of the entire incident, has ultimately been declared hostile during trial. She is P.W 6. She was allowed to be cross-examine by the prosecution, when she has deposed as follows:-

"Cross-examine by Pros:- Police did not examine me. Not a fact that on 25.4.07, I was tending near the door of our house and that when the grandfather Digambar Mahato was about to start his motorcycle for his school, Ranjit Mahato struck him with a tangi on his head and back and when I cried out, people assembled and thereafter Ranjit @ Raitu fled away from the scene. Ranjit @ Raitu is present in the dock. He is also uncle by village courtesy. Not a fact that I have deposed falsely at the request of the accused person."

- 13.** P.W 6, during her cross-examination by prosecution has firstly stated that she was not examined by police during investigation and also that the facts of her witnessing the incident, was not true.
- 14.** Therefore, so far as the involvement of the present appellant in commission of the alleged offence is concerned, the prosecution have only been succeeded to produce the victim as the witness. Before however, analysing of the evidence of the victim, it is beneficial that the medical evidence be discussed so as to ascertain the seriousness of the injury of the victim.
- 15.** P.W 4, P.W 7, P.W 10 and P.W 11 are the four doctors who have time to time examined the victim.
- 16.** P.W 4 who is the medical officer of Pathardih B.P.H.C. He examined the victim on the date of incident itself, having been brought by one Madhusudan Mahato from the Bagmundi Police Station. His finding are as follows:-
- “1) He was having a head injury with cut injury on the back of the head length 2 ½”.*
- 2) One small sharp cut injury 2.5 c.m. in length in right leg above the right ankle joint and pain and tenderness on back below right scapula.”*
- 17.** Evidence of this witness has been challenged by the defence/appellant on the grounds that firstly the said person Madhusudan Mahato who brought the victim to the B.P.H.C from the Bagmundi Police Station was not examined in this trial. Secondly, that with the injury report prepared by the said witness, no name of the assailant has been and also not the gravity of the injury or its age. Mr. Dutta Gupta appearing for the appellant has submitted that these discrepancies are fatal for the prosecution’s case. This also renders the evidence of P.W 1, P.W 2, P.W

3 and P.W 9 to be untrue in so far as the injured victim if could have named the assailant before them on the place of occurrence itself, he could have very naturally name him before the doctor too, which he has not.

18. P.W 7 is the medical officer of Purulia Sadar Hospital, he asserted that the injury of the victim was simple in nature. P.W 10 is the doctor on duty on Purulia Sadar Hospital on 25.04.2007 who advises admission of the victim after first aid.

19. P.W 11 is the surgeon on duty at Purulia Sadar Hospital on the said date. He examined the victim and found the following injury :-

“I found scalp injury measuring 1" X ½" X muscle”.

According to this witness the victim stated to him the name of the present appellant to have assaulted him with the sharp cut weapon namely “tangi”.

20. On scrutiny of the evidence of four doctors who examined the victim on the date of the incident, it appears that the victim suffered sharp cut scalp injury measuring 1.5 inches to 2.5 inches. It appears that the victim was oriented and conscious throughout the period of time. So far as the nature of injury is concerned, according to the evidence of P.W 10 the same is ‘simple’.

21. Admittedly in this trial the offending weapon has not been produced by prosecution. Noticeably, none of the expert witnesses have eliminated possibility of the injury, as found, to have happened otherwise than by infliction of a blow by any sharp cut weapon. Thus, firstly, so far as the conclusiveness of proof of the fact that the injury suffered by victim was only due to the blow by a sharp cut weapon, is doubtful. The same is only strengthened in view of absence of any seized material, which might

have been used by the assailant in commission of the crime. It is not a case of the prosecution that the assailant after commission of crime might have taken the weapon with him and fled away. Even then it would have been the bounden duty of the investigating authority to seize the weapon and produce the same in trial.

22. The statement of the victim regarding appellant's involvement in commission of the crime is inconsistent and so unbelievable. The victim says his name at the spot of occurrence to the other surrounding persons but not before the doctor at B.P.H.C. Then again after sometime the victim names him before one of the doctors at Sadar Hospital, leaving the other. There would not have been any cogent and convincing reason as to why the victim would not have named the assailant before the doctor at the time of admission, more particularly when there is no material on record to believe that the victim was not well oriented and in his senses throughout the entire time span.

23. By referring to the decision of the Hon'ble Apex Court reported in *AIR 1979 SC 1510 (Jagdish Prashad vs The State)*, it can be found in this case that in absence of any eye witness or incriminating weapon produced in trial, the other circumstances if taken on their face value, do not excluded the possibility of innocence of the accused person. Ratio in the said judgment applies to this case too.

24. On the discussion as above this Court is constrained to hold that the finding of the trial Court in the impugned judgment dated 20.01.2012 regarding guilt of the present appellant, is based on surmises and conjecture more than facts proved by prosecution beyond scope of any reasonable doubt. This Court is constrained to find that the evidence on record has not been considered by the trial Court in its proper perspective and the trial Court has failed to attribute appropriate value

to the evidence recorded by it. This has resulted into error in trial Court's finding, for which its judgment dated 20.01.2012 is not sustainable. Accordingly the present appeal should succeed.

- 25.** Criminal appeal being C.R.A 183 of 2012 is allowed. The judgment and order of sentence of the trial Court dated 20.01.2012 passed in Sessions Trial No. 08/08 of the Additional District & Sessions Judge, Fast Track, 3rd Court at Purulia is hereby set aside.

The appellant Ruitu Mahato @ Ranjit Mahato is found not guilty of the offence either under Section 324 or 326 or 307 of the IPC and is acquitted. He be immediately released from bail bond.

- 26.** Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

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(Rai Chattopadhyay,J.)