

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 1241 of 2005

ISTAFUR RAHAMAN
VS.
THE STATE OF WEST BENGAL

For the Petitioner : Mr. Milon Mukherjee, Sr. Adv.

For the State : Mr. B.K. Roy, Adv.

Hearing concluded on : 17th March, 2023

Judgement on : 23rd March, 2023

Siddhartha Roy Chowdhury, J.:

1. This Criminal Revision challenges the judgement passed by learned 1st Court of Additional Sessions Judge, Malda in Criminal Appeal No. 17 of 2001 preferred by the accused person having been found guilty to the charge under Section 306 of the Indian Penal Code by learned Chief Judicial Magistrate, Malda. Learned Appellate Court however, did not accept the appeal and thereby affirmed the order of conviction passed by learned Trial Court.
2. Mr. Milon Mukherjee, learned Senior Counsel impeaches the impugned judgement passed by learned Appellate Court. According to Mr. Mukherjee, learned Appellate Court failed to appreciate the evidence on record. The accused person was found to have committed the offence within the meaning of Section 326 of the I.P.C. which says :-

“326. Voluntarily causing grievous hurt by dangerous weapons or means. – Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. ”

3. It is adverted by Mr. Mukherjee that grievous hurt has been defined under Section 320 of the I.P.C. In this case the specific allegation is that the victim sustained fracture injury on his scalp being assaulted by the accused person. Therefore, prosecution was under obligation to prove that the victim sustained the fracture injury. The attending Medical Officer Doctor M. Pramanik in his oral testimony as P.W. 1 stated that the patient Fajlul Haque had sharp cut injury over the left Parieto Occipital region measuring about 12-15 cm. with compound fracture. The injury report was admitted as Exhibit – 1 but prosecution could not produce any X-ray report to substantiate the fact that the victim sustained fracture injury. Therefore, according to Mr. Mukherjee, learned Appellate Court had no reason to express his agreement with the view propagated by learned Trial Court. It goes without saying when prosecution asserts the fact that the victim was assaulted by the accused person and was made to suffer fracture injury, it is the

obligation of the prosecution to prove the said fact beyond reasonable doubt and I have no hesitation to express my agreement with Mr. Mukherjee that the said fact has not been proved beyond reasonable doubt by the prosecution. There is no cogent documentary evidence to suggest that the victim sustained fracture injury over his scalp. But the victim as P.W. 4 stated that while he was talking to Fajlur Rahman the accused person Istafur Rahaman came there and assaulted him on the back side of his head with Hansua causing bleeding injury. He has thoroughly been cross-examined by the defence council but there is nothing to impeach the credibility of the injured witness. He is getting support from the testimony of P.W. 1 the attending Medical Officer and Exhibit – 1 the injury report. From the testimony of P.W. 1 as well as from the injury report Exhibit – 1, I find that the victim sustained sharp cut injury over the left parieto occipital region measuring about 12-15 cm. in length. This fact is sufficient to hold that the accused person made the victim suffer sharp cut injury and thus he can safely be held to have committed offence within the meaning of Section 324 of the I.P.C. though not within the meaning of Section 326 of the I.P.C.

4. Under such circumstances, I am of the view that the impugned judgement suffers from infirmity and warrants interference. Since it is found that accused person committed offence under Section 324 of the I.P.C., and not under Section 326 of the I.P.C., while maintaining the order of conviction, I am inclined to interfere with the sentencing part of the judgement passed by learned Trial Court and duly affirmed by learned Appellate Court.

5. Keeping in mind the fact that the incident took place on 22nd January, 1995 more than 25 years ago and the petitioner being the convict has been passing through the agony and anxiety of being convicted for committing an offence, I am of the view that ends of justice would be met if the convict is sentenced to suffer imprisonment for the period already undergone and to pay compensation to the tune of Rs.30,000/- for committing offence under Section 324 of the I.P.C. to the victim within six weeks from date failing which, learned Trial Court would make him suffer imprisonment for one year.
6. Let a copy of this judgement along with L.C.R. be sent down to learned Trial Court for information and necessary compliance.
7. Urgent certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)