

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

CRA(SB) 69 of 2022

***Bisakha Majumder*
versus
The State of West Bengal**

For the Appellant : Mr. Swapan Kumar Mallick,
Mr. Kazi M. Rahaman.
Mr. Satadru Lahiri
Ms. Sudeshna Das, Advocates

For the State : Mr. Saswata Gopal Mukherji, Id. PP
Mr. Sandip Chakraborty,
Mr. Saryati Datta, Advocates

Heard On : 11.04.2023, 25.04.2023

Judgement On : 25.04.2023

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction and sentence dated 27.04.2022 and 28.04.2022 passed by the Learned Additional District & Sessions Judge, Fast Track Court (1st), Raiganj, Uttar Dinajpur in Sessions Trial No.06/15 arising

out of Sessions Case No.823/14 wherein the learned trial court was pleased to convict the appellant under Sections 448/326/307 of IPC and sentenced her as follows:

- (1) Simple imprisonment for 3 months and fine of `1,000/- i.d. to suffer further imprisonment for 1 month for offence punishable under Section 448 IPC.
- (2) Simple imprisonment for 5 years and fine of `2,000/- i.d. to suffer further imprisonment for 6 months for offence punishable under Section 326 IPC.
- (3) Simple imprisonment for 5 years and fine of `2,000/- i.d. to suffer further imprisonment for 6 months for offence punishable under Section 307 IPC.

By the same order learned trial court was pleased to observe that all the sentence was run concurrently.

The genesis of the case was on the basis of a complaint lodged by Nirmal Roy with the Officer-in-Charge, Hemtabad Police Station, Uttar Dinajpur where he alleged that on 04.04.2023 his wife Minati Roy was discussing with the accused about the money which she owed and the accused Bisakha Majumder assured her that she would come to her house with the money. His wife returned home and on that day at around 12 noon the accused planned not to return the money and came

to his house with a cleaver (*daw*) secretly covering with saree and at the time of discussing about the said money the accused took out the *daw* and assaulted on her neck with an intention to kill her. When his wife tried to save herself the accused continuously assaulted her on different parts of the body and while screaming she fell down on the ground. Hearing such hue and cry a neighbour viz Banosree Biswas rushed to the spot and the accused thereafter ran away with the cleaver (*daw*). At that time the complainant was not present at home and neighbouring people took his wife to Kaliaganj Hospital where doctor examined her and immediately referred to Raiganj District Hospital. His wife is under medical treatment at Raiganj District Hospital and is struggling with her life. The complainant further stated that he is working in a private firm at Guwahati and that is why there is delay in informing the incident.

On the basis of such information being sent to the Officer-in-Charge, Hemtabad Police Station Case No.55/13 dated 06.04.2013 under Sections 447/324/326/307 IPC was registered for investigation. On conclusion of investigation the investigating officer submitted charge-sheet under Sections 447/326/307 IPC against the sole accused/appellant. The case was thereafter committed to the court of sessions and finally it was transferred before learned trial court on or about 10.12.2014. Learned trial court was pleased to frame charges

under Sections 448/324/326/307 IPC. The contents of charge were read over to the accused which was not narrated and claimed to be tried.

The prosecution in order to prove its case relied upon 9 witnesses being PW-1, Nirmal Roy, the complainant and the husband of the injured; PW-2, Minati Roy, the injured; PW-3, Dhiren Barman, a co-villager; PW-4, Tapan Biswas, a co-villager; PW-5, Rabin Mondal, a co-villager; PW-6, Prasanta Biswas, a co-villager; PW-7, Abdul Jabbor, ASI of Police in Hemtabad Police Station; PW-8, Krishnendu Das, Officer-in-Charge of Hemtabad Police Station; PW-9, Dr. Somnath Chatterjee.

In order to prove its case the prosecution also relied upon 8 documents which included the written complaint, a seizure-list, formal FIR, rough sketch map of the place of occurrence along with index, bed head tickets etc. However, the defence did not produce any witness and only relied upon the evidence which was adduced by the prosecution particularly the cross-examination and the facts on which prosecution witnesses were confronted.

PW-1, Nirmal Roy in his evidence before the court narrated the incident in the same manner as he had lodged the complaint. The written complaint pursuant to his identification was marked as Ext.1 and he also identified the accused Bisakha Majumder in court.

PW-2, Minati Roy is the injured witness who deposed that on 04.04.2013 at about 12 noon, she asked Bisakha Majumder to pay dues of Rs.10,000/- while she was going through road. The accused answered that she would go to her house later. Then the accused came to her house and asked the injured to calculate the quantum of dues. The accused thereafter took out a daw from her waist under the saree and blew the same on her neck, when she tried to resist her by lifting her left hand she sustained injury on her left hand and upper side of elbow. Thereafter, she also sustained injury in the right side of neck and back. On raising hue and cry, one Banosree Biswas came to her house and saw the accused and at that time the accused left her house and rushed towards a bamboo bush for escaping. Other co-villagers took her to Raiganj District Hospital for treatment. At the time the incident took place no inmates were present. Her husband was working at Guwahati and he was informed over phone and she was admitted at Raiganj District Hospital. On the following day of incident her husband arrived there and came to know regarding the incident from her and thereafter he lodged the complaint against Bisakha Majumder.

PW-3, Dhiren Barman, a co-villager deposed that he heard hue and cry that Bisakha Majumder injured Minati Roy in her house and fled away. He rushed to the place of occurrence and found Minati Roy in

bleeding condition and there were injuries on her neck, right side, cut injury on her right hand and also on her back side. He deposed that Rabin Mandal and Prasanta Biswas brought the injured to Kaliaganj Hospital from her house by a local vehicle. She was admitted at the Kaliaganj hospital and thereafter transferred to Raiganj District Hospital. At the relevant point of time when the incident took place, her husband was in Guwahati who was informed by Subrata Biswas over telephone. The witness was a signatory to the seizure list dated 06.04.2013. His signature on being identified was marked as Ext.2. He was also shown daw which was seized and marked as Mat. Ext.1.

PW-4, Tapan Biswas, a co-villager, who deposed that at the time of the incident he was having his bath in the pond which was situated in between the house of Bisakha Majumder and Nirmal Roy. On hearing hue and cry of Minati Roy, he rushed to her house and asked her as to what happened, in reply the injured stated that she was assaulted with daw by Bisakha and as a result there were bleeding injuries. The witness took the injured Minati Roy to hospital. The injured was first shifted to Kaliaganj Hospital and thereafter she was shifted to Raiganj District Hospital. The witness also signed the seizure list dated 06.04.2013 by which the daw was seized. He identified his signature in the seizure list

which was marked as Ext.2/1 and also the daw which was marked as Mat.Ext.1.

PW-5, Rabin Mandal narrated the incident in the same manner as PWs 3 and 4. The witness also stated that he helped the victim to be admitted in Kaliaganj Hospital and thereafter she was shifted to Raiganj District Hospital.

PW-6, Prasanta Biswas narrated the incident in the same manner as PWs 4 and 5. He also stated that he accompanied the person who took the injured to Kaliaganj Hospital for treatment and identified the accused in court.

PW-7, Abdul Jabbor is ASI of Police of Hemtabad Police Station who deposed that on 06.04.2013 a complaint was lodged by Nirmal Roy with the Officer-in-Charge, Hemtabad Police Station. The Officer-in-Charge, Hemtabad Police Station endorsed the case to him for investigation and he prepared the formal FIR and identified the signature of the OC and the same was marked as Ext.3 and the formal FIR was marked as Ext.4. The witness prepared rough sketch map which was identified and marked as Ext.5/1. The witness also deposed that he recorded the statements of available witnesses and also seized the offending weapon/daw and the seizure list which was prepared by him was marked as Ext.6. On 07.04.2103 he arrested the accused Bisakha

Majumder and thereafter collected injury report of Minati Roy from Raiganj District Hospital. He identified the accused in court and submitted charge-sheet under Sections 447/326/307 IPC against the accused.

PW-8, Krishendu Das is SI of Police at Islampur PS who at the relevant time was Officer-in-Charge of Hemtabad Police Station. The witness deposed that on receipt of complaint, Hemtabad PS Case No.55 of 2013 dated 06.04.2013 was registered for investigation. He identified the endorsement in the written complaint along with the signature and seal in written complaint which was marked as Ext.8. He also identified the formal FIR which was marked as Ext.4/1.

PW-9, Dr. Somnath Chatterjee deposed that on 04.04.13 one patient namely Minati Roy was admitted in Raiganj District Hospital under him and he started her treatment. He attended the patient many times during her stay in Raiganj District Hospital. Firstly, she was diagnosed deep cut on her neck and she stayed in hospital for 8 days. She was conscious to make statement. The injuries were over sternomastoid, trapezius muscle. Three injuries were found, one was 12 cm X 3 cm X muscle depth, 2nd one was 3 cm X 2 such over arm and 3rd one was 4 cm over back. All injuries were repaired under general

anesthesia. In cross-examination doctor categorically pointed out that such type of injuries cannot occur when one falls on the ground.

Mr. Swapan Kumar Mallick, learned advocate appearing on behalf of the appellant submits that in the present case, the evidence of the victim P.W.2 namely Minati Roy is not believable and there is no corroboration to her version. There was enmity between the families for which the appellant has been falsely implicated in the instant case and the only person who could have seen the incident is one Banosree Biswas who was never produced by the prosecution before the court.

Learned advocate further submits that the nature of the evidence so relied upon in the present case do not inspire confidence as there are no corroboration to the statement of the injured, PW-2 and no materials are also surfacing from the injury report so relied upon by the prosecution. PW-9, Dr. Somnath Chatterjee has also deposed that the history of the incident is not appearing in the injury reports.

Learned advocate for the appellant has relied upon a decision of Supreme Court in the case of *Amar Singh -vs- State (NCT of Delhi)* reported in (2020) 19 Supreme Court Cases 165.

Mr. Mukherji, learned Public Prosecutor appearing for the State opposes the contentions and has submitted that the injured was admitted in the hospital for 8 days. The injuries sustained by PW-2 was

vividly described by the doctor in his evidence. The nature of injuries complained are on the vital parts of the body which do raise a presumption regarding the manner in which the offence has been committed and the intention associated with the same.

It has also been submitted that there is no scope for not disbelieving the evidence of PW-2 who happens to be an injured witness and mere absence of eye-witnesses cannot in any manner rule out the possibility of an incident of injury. According to the learned Public Prosecutor, State supports the judgement and the order of conviction and sentence so imposed by the learned trial court.

I have considered the submissions advanced on behalf of the learned advocate for the appellant as well as the State and on an appreciation of the same, I find that the injured prosecution witness no. 2 and the accused/appellant were neighbours. The factum that there were dues which were to be returned and their relation on such issues cannot be ruled out. The witness was cross-examined but a routine suggestion was only made regarding the previous enmity but there is nothing on record from which it is found that there is any scope of false implication as immediately after the incident on hearing hue and cry, number of co-villagers particularly PWs 3,4,5 & 6 appeared at the place of occurrence and in fact some of the witnesses also saw the

accused/appellant running away towards the bamboo bush after the incident.

Mr. Mallick, learned advocate for the appellant in order to counter such contentions definitely pointed out regarding some inconsistency of non-production of the exercise book where the accounts were kept or the 'Daw' with which PW 2 was injured being not shown to her.

In the background of the case, I hold that the same are minor inconsistencies as there are subsequent seizures and the seizure list witnesses were not cross-examined on such point.

So far as the judgement relied upon by Mr. Mallcik, learned advocate for the appellant in Amar Singh(Supra), I find that the case was under Section 302 read with Section 34 of the Indian Penal Code wherein the eye-witness was disbelieved. Now, the cited case was factually different as the present is a case where the injured has narrated her version regarding the manner in which she sustained the injuries, whereas in the cited case it was a narration of the eye-witness. As such, the referred judgement do not come to the aid of the present appellant.

Having regard to the totality of the circumstances particularly the injuries and that the incident occurred within a close proximity of

time when PW-2 had asked for return of the money, I am of the view that there was an instinctive anger which took place at the relevant point of time which compelled the accused/appellant to inflict such injuries, but the same cannot be said to be for the purposes of attempting to murder or kill the victim/injured. Consequently, interference is called for in the judgement of order of conviction and sentence which is under challenge, the conviction and sentence under Section 307 IPC is hereby set aside.

So far as the offences under Sections 448 and 326 IPC are concerned, the same is hereby affirmed.

Having considered the fact that the appellant happens to be a lady and the incident occurred on a spur of the moment, I am of the view that the sentence so imposed under Section 326 of the Indian Penal Code be reduced to a period of one year. Thus, the conclusion is summarized as follows:-

1. The appellant is acquitted under Section 307 IPC;
2. The appellant is convicted under Sections 448/326 IPC;
3. The sentence so imposed by the learned trial court is modified in respect of Section 326 IPC to a period of one year of Simple Imprisonment.

It has already been directed by the trial court that the sentences would run concurrently, it is further directed that if the appellant has suffered in course of investigation or during the trial or the pendency of the appeal, such period of detention behind the bar should be set off from the sentence so imposed.

Thus, CRA (SB) 69 of 2022 is partly allowed.

The appellant is on bail, her bail bond stands cancelled and she is directed to surrender and serve out the remaining part of the sentence.

Pending connected application, if any, is consequently disposed of.

Department is directed to send back the lower court records along with a copy of this judgement immediately to the learned trial court.

All parties shall act on the server copy of this judgement duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)

