

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 1635 of 2018****IN THE MATTER OF
Goutam Bayen & Ors.****Vs.****The State of West Bengal & Anr.**

**For the Petitioners : Mr. Sabir Ahmed Adv.,
Mr. A.K. Banerjee Adv.,
Mr. Biswajit Sarkar Adv.,
Mr. Dhiman Banerjee Adv.,
Ms. Suman Biswas Adv.**

For the State : Mr. Ranadeb Sengupta Adv.

Judgment on : 12.09.2023

Subhendu Samanta, J.

This is an application u/s 382 read with Section 401 of the Code of Criminal Procedure against a judgment and order dated 12th February, 2018 passed by the Learned Additional Sessions Judge, Birbhum at Rampurhat in connection with criminal appeal no. 6 of 2018 arising out of which GR no. 254 of 2003 thereby convicting the present appellants under sections 323/324 of IPC and sentencing them to pay a fine of Rs 500/- each in default to suffer simple imprisonment for one

month for offence punishable u/s 323 of IPC and also to suffer simple imprisonment for three months each along with imposition of fine of Rs. 500/- in default to suffer simple imprisonment for one month for the offence punishable u/s 324 of the IPC 1860.

The brief fact of the case is that the present petitioners were convicted by the Learned Additional Chief Judicial Magistrate, Rampurhat Birbhum in connection with GR No. 254 of 2003. The present petitioners preferred an appeal before the Learned Additional Sessions Judge, Rampurhat Birbhum against the said order of conviction. The Learned Sessions Judge after hearing both the parties has passed the impugned order against which the instant appeal has been preferred.

Learned Advocate for the petitioners submits that the disputes were cropped up between the parties in respect of the Local "Dharam Puja" and for distribution of meat. It alleged that the present petitioners have assaulted Sarbeswar Bayen and sabitri Bayen with lathi and sharp cutting weapons. The said Sabitri and Sarbeswar sustained bleeding injuries and they were admitted to the hospitals. The prosecution has produced 10 PWs and after hearing the parties Ld. ACJM found the present petitioners guilty for the offence punishable under sections 323/324 of the IPC.

Learned Advocate for the petitioners further argued that there are no eye witnesses in the said alleged incident of assault. The so- called eye witnesses were not examined by the police and police has not collected the blood stain earth and blood stain wearing apparels of the injured. The police also did not seized the offending weapons during the course of investigation of this case. He argued that the observation of the Learned Additional Chief Judicial Magistrate as well as the Additional Sessions Judge is completely erroneous. The statement of the PWs are full of contradictions. He further argued that during the admission of injured before the hospital the name of the present petitioners was not uttered by the injured persons or the patient party. He further argued, it would be revealed that the injury sustained by the injured is simple in nature. So the offence punishable u/s 324 IPC is not at all proved. He prayed for setting aside the impugned order passed by the Learned Sessions Judge and for acquittal of the present petitioners.

Learned Advocate appearing on behalf of the states submits that the impugned order passed by the Learned Additional Sessions Judge suffers no illegality. Learned Additional Sessions Judge has perused the evidence of injured i.e. PW 4 and PW 5 and he also perused the evidence of the

doctors i.e. PW 7 and PW 8. Wherefrom the involvement of the present petitioner and offence committed by them has been sufficiently proved. The impugned judgment passed by the Learned Additional Sessions Judge cannot be set aside.

Heard the Learned Advocates.

Perused the materials on record also perused the impugned judgment passed by the Learned Sessions Judge as well as the impugned Judgment of Learned Additional Chief Judicial Magistrate concern. It appears that the instant criminal case was initiated by a petition of complaint lodged with the Mayureswar P.S. on 26.05.2003 by one Dulal Bayen. The de-facto complainant has deposed as PW 1 the injured were deposed as PW 4 and PW 5 respectively. In the petition of complaint it has been alleged that the present petitioners has assaulted the injured persons by sharp cutting weapons and lathi; by such assault the injured has sustained bleeding injuries and they were shifted to the hospital. During the evidence, de-facto complainant specifically stated that the present petitioners has used the Tangi (a sharp cutting weapon) and lathi to assault the injured. The injury sustained by the PW 4 and PW 5 has been sufficiently proved by the doctor in this (PW 7 and PW 8). During the evidence doctors have stated that the injury sustained by the injured may be

caused due to assault through a blunt instrument. The PW 8 also is of opinion that the injury sustained by the injured can be happened if they fall down over a stone or brick wall. Admittedly the I.O. (PW 10) did not seize any blood stained wearing apparels. During the course of investigation the IO also did not seize any sharp cutting weapon (tangi). He admitted in his cross-examination that during the course of investigation of the injured i.e. Sabitri did not said to the I.O. that the present petitioners has assaulted her with (tangi).

The grave discrepancies appears in the prosecution case while firstly, injured or the patient party never stated the name of the present petitioners at the time of the admission of the injured persons to the hospitals. Secondly, the I.O. has not collected the blood stained wearing apparels and the weapons used to assault the injured.

Admittedly the injury sustained by the injured is simple in nature. The charge has been framed u/s 325 and 326 IPC but the Learned Magistrate on considering the evidences on record is of view that ingredients u/s 325/326 IPC has not been substantiated in respect of the injuries thus he convicted the present petitioner u/s 323 and 324 of IPC. Learned Sessions on observing the materials on record is of view that the evidence of injured cannot be brushed aside in respect of

involvement of the present petitioner in the alleged offence. The Learned additional Sessions Judge has also observed that the nature of injury is cut injury and hematoma. Thus the petitioner rightfully guilty u/s 323 and 324 of IPC.

On chronological assessment of the fact of assault has alleged against the present petitioner goes not show that the present petitioners has assaulted the PW 4 and PW 5 on the day of incident; on such they sustained bleeding injury and admitted to the hospitals. The injury sustained by them is a simple injury. Let me consider whether the offence punishable u/s 323 and 324 has been sufficiently proved.

Section 323 of the IPC is punishment of voluntary causing hurt. Section 319 IPC has defined the offence of "Hurt" as follows:--

"whoever causes bodily pain, disease or infirmity to any person is said to cause hurt."

Section 324 IPC provides the punishment for voluntarily causing hurt by dangerous weapons or means."

324. Voluntarily causing hurt by dangerous weapons or means--- whoever, except in the case provided for by section 334, voluntarily causes 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 or either description for a term

which may extend to three years, or with fine, or with both.

So to substantiate an offence punishable u/s 324 IPC the prosecution has to prove that the hurt has been caused to the assailant by the means of any instrument for cutting, stabbing or cutting or any instrument which used as a weapon of offence, is likely to cause death. In this case it has been alleged that a sharp cutting weapon (tangi) was used to cause hurt to the PW 4 and PW 5 by the present petitioner. In the FIR the de-facto complainant did not state about the use of such Tangi (sharp cutting weapon). During the evidence of PW 1 first time he stated about the use of Tangi to inflict assault. The fact goes to show that firstly, the petitioners assaulted Sarbeswar. Thereafter they assaulted Sabitri. Sabitri (PW 4) has deposed that the present petitioner has assaulted Sarbeswar by lathi and thereafter they assaulted Sabitri by Tangi. But she did not state the IO regarding the use of tangi at the time of recording her statement u/s 161 Cr.P.C.

Doctor (PW 8) has stated that the injury sustained by the injured may be inflicted by the assault of lathi and sharp cutting weapon. During his cross-examination he stated that as per version of the injured he mentioned in his report regarding the use of such lathi and sharp cutting weapon. Sarbeswar never said about the use of sharp cutting weapon as

he was not injured by any of such sharp cutting weapons. The fact goes to show with Sabitri has stated that such use of sharp cutting weapons. But the doctor (PW 7) has stated before the Magistrate that Sabitri was suffering from Aphasia (a language disorder which can occur suddenly of assault for head injury). So, it is quite impossible for Sabitri to said anything about assault while she was suffering Aphasia. The evidence of I.O (PW10) makes it clear that he did not seize any sharp cutting weapons during the course of investigation of this case. The used of sharp cutting weapon is the main ingredients for the offence u/s 324 IPC. During the initiation of FIR the de-facto complainant has stated that the petitioners has used a sharp cutting weapon to assault the injured. During the entire course of investigation the presence of such sharp cutting weapons was absent. During the investigation while the Sabitri was inquired by the I.O. she also did not state about such the use of sharp cutting weapons (tangi). The police has submitted charge sheet u/s 325 and 326 IPC and charges were framed accordingly.

The only term, that one assaulted by another by using sharp cutting weapons does not ipsofacto prove the offence punishable u/s 324 IPC. It is true that the manner of use of sharp cutting weapons is not required to prove u/s 324 IPC,

but the use of the sharp cutting weapon is required to be proved. To prove such requirements the FIR or the witnesses state positively before the I.O regarding the particular nature of sharp cutting weapon and the IO must have collected and seized the sharp cutting weapon to prove the offence u/s 324 IPC. In absence of such particulars in the case of prosecution, it is obvious that the alleged injury may be inflicted by use of blunt weapons. The only evidence of doctor regarding the use of sharp cutting weapons is noting but hearsay. The doctor was not present at the time of the alleged assault and the opinion of doctor on observing the injury may be explained in either way. Considering the entire circumstances in this case it think it necessary to observe that the Learned Additional Sessions Judge, has failed to appreciate the basic ingredients required u/s 324 of IPC in this case. There may have a reasonable doubt in this case that the present petitioners used in sharp cutting weapon to inflict assault upon the PW 4 and PW 5. Considering the same the prosecution has miserably failed to bring home the charge against the present petitioners u/s 324 IPC beyond all reasonable doubts. In that score the conviction of the present petitioner u/s 324 IPC is appears to me bad in law. The impugned order passed by the Learned Additional Sessions Judge affirming the order of Learned Additional Chief Judicial

Magistrate regarding the conviction of the present petitioner u/s 324 IPC is hereby set aside. Thus I find merit to entertain the instant criminal revision.

CRR is allowed in part. The order of conviction and sentence against the present petitioner for the offence punishable u/s 324 IPC is hereby set aside.

Petitioners are directed to appear before the Learned Additional Chief Judicial Magistrate Rampurhat, Birbhum on or before 12th day of October 2023 to serve out their sentences punishable u/s 323 IPC.

CRR along with the connected pending CRAN applications if any are disposed of.

Any order of stay passed by this court during the pendency of the instant criminal revision is hereby also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)