

21.04.2023

p.b.
Sl. No.70.

CRA 332 of 2018

In the matter of: Madan Bhowmik.

Mr. Amal Krishna Samanta,
Mr. Subhas Jana,
Mr. A. K. Das.

.....for the appellant.

Mr. S. S. Imam,
Mr. S. Kundu.

.....for the State.

This criminal appeal impeaches the judgement passed by the learned Additional Sessions Judge, 1st Court cum Special Court on Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. By the impugned judgment, learned trial court was pleased to record an order of conviction against Sri Madan Bhowmik, the accused for committing offence within the meaning of Section 323 of the IPC and directed him to suffer simple imprisonment for one month and to pay fine of Rs.1,000/- with a default clause, subject to the provision of Section 428 of the Code of Criminal Procedure.

Briefly stated that Dilip Kumar Barman informed the Officer-in-Charge of Moyna Police Station in writing that on 19th July, 2012 at about 3-30 p.m. he went to the office of gram panchayat pradhan. A discussion was going on over the issue of payment under the NREG

Scheme when suddenly the Deputy Pradhan Madan Bhowmik assaulted him. He was boxed at by Madan Bhowmik, and thereafter he was kicked even. The information since disclosed offence cognizable in nature, Moyna Police Station Case No.119 dated 20th July, 2012 was registered. Police took up investigation and submitted charge-sheet against the accused persons.

On 19th June, 2015 the trial commenced and pleading his innocence to charge under Section 323 of the IPC and under Section 3(1) of SC & ST (Prevention of Atrocities) Act, 1989, the accused Madan Bhowmik claimed to be tried. The co-accused Saraswati Baichar also stood the trial pleading her innocence to the charge under Section 109/323 of the IPC.

Prosecution in order to crown success examined 14 witnesses. Learned trial court considering the evidence both oral and documentary was pleased to exonerate the co-accused Saraswati and recorded order of conviction under Section 323 of the IPC against the appellant.

Mr. Samanta, learned counsel for the appellant submits that learned trial court did not consider the discrepancies which are explicit and which make the case of prosecution doubtful. Drawing my attention to the contents of the written information exhibit-2, Mr. Samanta submits that though in his written

information, the informant victim stated that accused throttled him during his oral testimony, he did not make any whisper on that part as PW-1. He stated that Upa-Pradhan of the said gram panchayat Madan Bhowmik called him and held his shirt. It is further averted that no injury report was produced before the trial court to substantiate the allegation. There was no corroboration to the testimony of P.W.1. The statement of PW-1 that he was assaulted by Upa-Pradhan Madan Bhowmik is sufficient to hold accused persons guilty of voluntarily causing hurt to victim P.W.1, who has voluntarily been cross-examined, but nothing has come out to impeach his credibility.

Therefore, in a case under Section 323 of the IPC, I do not find any reason to look for corroborative evidence. Accordingly, I do not find any reason to interfere with the conviction.

Mr. Samanta submits that appellant is ailing from heart diseases and he has spent 29 days in custody. Only one day is left. Therefore, instead of sending the man behind the bar, he may be directed to pay fine at the enhanced rate.

Mr. Kundu, learned counsel representing the State does not have any objection to such submission of Mr. Samanta. Considering the facts and circumstances of

this case, age of the lis, I am inclined to interfere with the sentencing part of the impugned judgement.

In my opinion, for the ends of justice to meet if the appellant is directed to pay fine of Rs.15,000/- instead of asking him to stay one more day beyond the bar, it would suffice.

Accordingly, the appeal is allowed in part.

The appellant is directed to pay a sum of Rs.10,000/- to the Secretary GLSA, Purba Medinipur and Rs.5,000/- to the victim within four weeks from date, failing which learned trial court will be at liberty to send the man behind the bars to serve out the remaining part of the sentence.

Let a copy of the judgment be sent down to the learned trial court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)