

Form No. J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL/APPELLATE JURISDICTION
APPELLATE SIDE

Present: The Hon'ble Justice Siddhartha Roy Chowdhury

C.R.A 389 of 2018

Nur Alam Sabjee @ Bhalluk
-vs-
State of West Bengal

For the Appellant : Ms. Shreeparna Das
Mr. Subradip Roy

For the State : Mr. Joydeep Roy
Ms. Sujata Das

Heard on : 08.02.2023

Judgement : 08.02.2023

Siddhartha Roy Chowdhury, J.

This appeal challenges the judgement and order of conviction passed by the learned Additional Sessions Judge, Chanchal within the district of Malda, sentencing the appellant to suffer imprisonment for six months for committing offence under Section 323 of the Indian Penal code and pay fine of Rs. 1000/- in default to suffer simple imprisonment for 15 days.

Fact of this case in short is that one Abdul Rouf set the criminal proceeding into motion by informing the Officer-in-Charge, Ratua Police Station in writing about an incident that took place on 15th of January, 2014 at about 20.45 hrs. when his younger brother

was assaulted by Nur alam Sabjee @ Bhalluk. It is alleged that the appellant wanted to have some eggs from Ataur Rahaman but he refused to deliver the eggs on credit which enraged the accused person. He assaulted Ataur Rahaman with iron rod resulting into injury on the nose of the victim even attempt was made to the throttle the victim. The accused person took away a sum of Rs. 850 which the victim kept as sell proceeds of eggs out of the possession of the victim. The incident disclosed an offence cognizable in nature and Ratua P.S. Case No. 28 of 2014 was registered under Section 34/325/307/379 of the IPC. Police took up investigation and submitted chargesheet against the accused person, who stood the trial, pleading his innocence. To crown success prosecution examined 9 witnesses and learned trial court after considering the evidence both oral and documentary was pleased to pass the judgement impugned.

Assailing the impugned judgement, Ms. Shreeparna Das, Learned Counsel representing the appellant submits that prosecution case is full of discrepancies. There is nothing to implicate the accused person for to speak of saddling him with criminal liability for committing the offence under Section 323 IPC.

Drawing my attention to the testimony of PW-4, the victim Ms. Das submits that the victim stated that he sustained injury because of a fight, which started, even if it is assumed that the allegation is correct, as he refused to give eggs on credit to the accused person.

This statement that he sustained injury because of fight indicates that the accused did not assault him voluntarily. It is further contended that the victim never disclosed the history of injury to the doctor.

PW-1 the Medical Officer who claimed to have attended the victim, stated that Ataur Rahaman whom he attended is the son of Sajat Ali and not Saheb Ali the father of the victim. This statement gives birth to reasonable suspicion that the victim was not examined by the doctor, PW-1. Therefore, the evidence of P.W.1 is of no consequence. It is further contended by Ms. Das that P.W.2, P.W.-3 even the de facto complainant, PW-5 did not have any direct knowledge about the incident, so is the evidence of PW-7 and PW-8.

PW-4 being the injured states that he sustained bleeding injury but could not produce anything to substantiate such claim. The alleged incident took place at a busy area, in front of a hotel near bus stand, some persons should have been there and would have witnessed the incident, had there been any such, the way, it has been described by the victim. For want of corroboration, according to Ms. Das, the testimony of PW-4 should not have been relied upon by learned Trial Court. The order of conviction therefore deserves reversal.

Learned Counsel representing the State, submits that the accused since have been found guilty for committing offence within

the meaning of Section 323 of the IPC, injury report is not a *sine qua non* to prove such charge.

Now-a-days it is very difficult to find persons willing to come and adduce enhance before the Court for the cause of others. Therefore, prosecution case should not be disbelieved particularly when Evidence Act does not demand any particular number of witnesses to prove a charge. Testimony of PW-4 can be relied upon. The discrepancy in the name of the father of the victim as recorded by the Medical Officer is minor nature which court should ignore. Evidence Act does not demand corroboration but it is a rule of prudence only.

PW-4 stated that due to fight he sustained injury but he hastened to add that Nur Alam assaulted him. He stood the test of cross-examination. I feel no hesitation to rely upon the testimony of P.W.-4. A ring of truth can very well be perceived in what he stated on oath before the learned Trial Court. The discrepancy in recording the name of father of the victim is of trivial in nature and I am ignoring the same. PW-4 is getting support from PW-1, the doctor.

Hence, in my view the impugned judgement does not warrant any interference so far as the order of conviction is concerned. The incident is of 2014. The appellant has been passing through the agony, anxiety caused by the criminal proceeding for more than eight years.

Taking into consideration, the nature of offence committed, I am of the view that ends of justice would be met if the appellant is sentenced to serve imprisonment for the period under gone. The appellant is discharged from bail bold but he is to execute a bond under Section 437A for six months.

This appeal is allowed but in part.

Let a copy of the judgement along with LCR be sent down to the Trial Court forthwith.

Criminal Section is directed to deliver urgent photostat certified copy of this order to the learned advocate of the parties, if applied for, as early as possible.

(Siddhartha Roy Chowdhury, J.)