

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE PARTHA SARATHI SEN

C.R.A. No. 480 of 2009

Amir Chand Mondal.
-Versus-
The State of West Bengal

For the Appellant:	Mr. Partha Sarathi Bhattacharyya, Adv. Mr. M. Maity, Adv. Mr. Sailendu Sekhar Bayend, Adv.
For the State:	Mr. Prasun Kumar Dutta, Ld. Adv. Mr. Md. Kutubuddin, Adv. Ms. Zareen N. Khan, Adv. Mr. Santanu Deb Roy, Adv.

Last Heard on	:	24.11.2022
Judgment on	:	13.01.2023

PARTHA SARATHI SEN, J. : –

1. The instant appeal arises out of the judgement of conviction dated 24.04.2009 and order of sentence dated 27.04.2009, as passed by the Learned Additional Sessions Judge, Fast Track Court, 2nd Court Malda in Sessions Case no. 169 of 2001. By the impugned judgement learned trial court found accused Amir Chand Mondal guilty under Sections 307/326 I.P.C and thus, sentenced him to suffer rigorous imprisonment for life and fine of Rs.10,000/- i.d. to suffer rigorous imprisonment for further six

months for the offence committed by him under Sections 307 I.P.C and also to suffer rigorous imprisonment for life and fine of Rs.10,000/- i.d to suffer further rigorous imprisonment for 6 months for the offence committed by him under Section 326 I.P.C.

2. The convict felt aggrieved and thus, preferred the instant appeal.

3. The backdrop of the case of prosecution is discussed in a nut shell hereunder.

4. One Sukumar Mondal of village Adina, P.S Gazole, District Malda lodged a written complaint dated 02.02.1998, with the O/C Gazol P.S. stating, inter alia, that Shri Durlav Mondal, who is his uncle by distant relation was taken by the accused Amir Chand Mondal, at his home at 3 p.m. on the same day and thereafter an altercation started between them and soon thereafter the said accused fired at the abdomen of his said uncle and fled away from the spot. It has also been stated that with the help of village people the injured was taken to a local hospital wherefrom he was referred to Kolkata for his better treatment. It has also been disclosed that since the de facto complainant was busy for the treatment of the victim, some delay occurred in lodging the F.I.R.

5. On the basis of such written complaint Gazol P.S Case No. 21/98 dated 02.02.1998, under Sections 326/307 I.P.C and under Sections 25(1)(a)/27 Arms Act was started.

6. Investigation was taken up and on completion of the same, charge sheet was submitted under Sections 326/307 I.P.C read with Sections 25(1)(a)/27 of the Arms Act. Thereafter the instant case was committed

which was subsequently transferred to the learned trial court for trial and disposal. Learned trial court on perusal of the entire materials as placed before him framed charges under Sections 326/307 I.P.C and under Sections 25/27 of the Arms Act. Since the accused pleaded his innocence and claimed to be tried, the trial proceeded. Trial Court Record reveals further that in order to bring home the charges as framed against the accused, the prosecution has examined 15 witnesses in all and several documents have been exhibited on their behalf. Lower Court Record reveals further that though the defence has not adduced any evidence but from the trend of cross-examination of the prosecution witnesses and the answers as given by the accused under Section 313 Cr.P.C, it appears that the defence case is of clear denial and false implication. Lower Court Record also reveals that the learned trial court after appreciation of the evidence, both oral and documentary, as adduced by the prosecution witnesses came to a finding that the charges under Sections 326/307 IPC have been proved against the accused but the charges under Sections 25/27 of the Arms Act could not be proved and accordingly he passed the aforementioned judgement which is assailed before us.

7. For effective disposal of the instant appeal we propose to look to the evidence both oral and documentary as adduced by the prosecution witnesses before the learned trial court.

8. PW1 is the victim of the alleged incident who in course of his examination-in-chief testified that on 01.02.1998 which was a day of Saraswati Puja of the said year at about 2:30/2:45 p.m while he was

standing at Adina More at that time the accused, the appellant herein asked him to come to his house on the plea of giving 'prasad' of Saraswati Puja and after entering into the house of the accused when he was standing on the courtyard, the accused came out from his room with a pipe gun and shot at his abdomen. He further testified that he raised hue and cry and the neighbouring people namely; Champa Mondal @ Champalala, Paresh Mondal, Ratan Mondal (PW2), Harish Ch. Mondal (PW6), Sankar Singha (PW9), Bhola Nath Saha (PW7), Baidyanath Mondal (PW10) and the others rushed to the P.O. before whom he disclosed the name of the assailant as well as the activity of the accused. He further testified that the said persons thereafter took him to Hatimari Hospital from where he was shifted to Sadar Hospital at Malda and from the said hospital at Malda, he was referred to Kolkata Medical College and Hospital for his better treatment. He stated further that he remained admitted in the said Medical College and Hospital for 18/19 days where he was operated twice. It is his further version that after his discharge, the police came to his house after 2 and ½ months of the incident with a request to hand over the some papers to them which he complied and the police seized the same after executing a seizure list. It is his further deposition that later he came to learn that one Sukumar Mondal informed the incident to the police station.

P.W. 1 i.e the victim was extensively cross-examined on behalf of the accused. In course of his cross-examination he stated that on the relevant day and hour he met the accused at Adina More. It is his further

deposition that at about 2:30/2:45 pm he reached at the P.O since the accused pressurized him to go to his house though he was not willing. He further stated that on the relevant day and hour they had no altercation and after entering into the house of the accused, he was standing there facing at the eastern side and at that time the accused came out from his house by making face on the northern side and thereafter the said accused put a pipe gun upon his abdomen and then fired at him. He stated further that as soon as the bullet hit him, he fell on the earth and he was bleeding then. He further stated that his wearing apparel became blood stained but he did not lose his sense. In his cross-examination he had given a vivid description as to how he was taken to hospital by the local people. He further stated that he was interrogated by the I.O.

9. PW2, PW3, PW4, PW5 and PW7 according to the prosecution are the residents of Adina but peculiarly enough all the aforesaid prosecution witnesses though confirmed that an incident occurred with the victim on the day of Saraswati Puja but for the best reason known to them, they declined to state as to how the said incident occurred with the victim Durlav Mondal and accordingly they all have been declared hostile by the prosecution. In course of their respective cross-examinations they denied that they have given statements to the I.O. with regard to the alleged incident of shooting by accused by which the victim suffered bleeding injury on his abdomen.

10. PW8 is the Recording Officer who in his examination-in-chief duly proved his endorsement over the written complaint and the formal F.I.R

as drawn by him. His cross-examination in our estimation is not much relevant. Since PW9, PW10 and PW11 adduced similar evidence like the aforementioned hostile witnesses, we do not find any reason to discuss about their deposition since their deposition is no way helpful either for the prosecution or for the defence.

11. PW12, is a medical officer (surgeon) of Malda District Hospital. From his evidence we found that he testified that on the relevant day he examined the victim and thereafter admitted the victim at 5:10 pm with bullet injury at his abdomen. He further stated that the patient in his statement disclosed before him that he was shot by the accused, the appellant herein. In course of his examination-in-chief he stated the following:-

“ on examination, patient was found to be to be conscious. One penetrating wound over lower and anterior abdominal wall(3/4 X ½) . Superficial burn was found around the wound. Bleeding from the wound was also found. Pulse was 100p.m. Volume was low. The patient was referred to any teaching institution at Calcutta.”

12. In course of his examination-in-chief he also proved the bed head ticket of the patient which has been marked as Exhibit 5 (series). PW12 was extensively cross-examined by the defence and in course of his cross-examination he stated that the said bed head ticket is not in prescribed form since at that material time plain paper was used and supplied as a bed head ticket. He further stated that in the bed head ticket, the seal of the of the hospital and his hand written signature are there though there is no mentioning of time in Exhibit 5/2. He further stated that he found

bleeding from the injury of the victim. He also stated that he did not mention in his report as to whether there existed any entry and exit wound mark. He denied the suggestions as given by the defence.

13. PW13, is a medical officer attached to Calcutta Medical College and Hospital and in his examination-in-chief he testified that the victim was admitted under him with gunshot injury by one Amir Chand Mondal and he had written such history on hearing.

14. PW 14, is the first investigating officer who stated that after taking charge of investigation he visited the P.O and prepared a rough sketch map with index and examined the witnesses under Section 161 Cr.P.C. He however, stated that he did not examine the injured since he was at that time admitted in hospital at Calcutta.

15. PW15 is the second investigating officer who stated that after taking charge of investigation, he collected the discharge certificates of the victim from Calcutta as well as his injury report. He seized those documents. He further stated that he had examined Baidyanath Mondal (PW10), Durlav Mondal (PW1), the victim, Sankar Singha (PW9), Harish Chandra Mondal(PW6) and Bhola nath Saha (PW7) and recorded their statements under Section 161 Cr. P.C. He also stated that in course of their examinations under Section 161 Cr.P.C, the aforementioned hostile prosecution witnesses categorically stated before him as to how and by whom the victim suffered the bullet injury. In his cross-examination PW15 stated that he made no attempt to search in the house of the accused for the recovery of the weapon of offence. He also made no effort

to seize any bullet from hospital. He also stated that it is the practice that the bed head tickets are issued in a prescribed form. He denied all the suggestions as given to him by the learned advocates for the defence.

16. Mr. Bhattacharyya, learned advocate for the appellant in course of his argument draws attention of us to the evidence of the prosecution witnesses as well as to the impugned judgement. It is argued by him that since the evidence of the victim i.e. PW1 gets no support and/or corroboration from the evidence of other prosecution witnesses, learned trial court is not at all justified in passing the impugned judgement of conviction against the appellant. It is further argued that learned trial court is also not justified in convicting the present appellant both under Section 307 I.P.C and under Section 326 I.P.C for the alleged commission of crime of one and same offence. In support of his contention Mr. Bhattacharyya, learned advocate placed his reliance upon two reported decisions namely; **Meeting Sk. & Others vs. State of West Bengal reported in (2007) (1) CHN 271** and **Furkan Sk. vs. State of West Bengal reported in (2016)4 CALLT 568(HC).**

It is thus, argued by Mr. Bhattacharyya, that it is a fit case for allowing the instant appeal by setting aside the impugned judgement.

17. Mr. Prasun Kumar Dutta, learned Public Prosecutor-in-charge duly assisted by Ms. Zareen Khan, Md. Kutubuddin and Mr. Santanu Deb Roy, Ld. Advocates for the State, however, contended that there is no reason to disbelieve the convincing testimony of PW1 and therefore, learned trial

court committed no error of fact or of law in passing the impugned judgement.

18. We have perused the entire materials as available in the trial court record including the impugned judgement. We have also given our due considerations over the submissions of the learned advocates of both sides. On perusal of the evidence of the prosecution witnesses it appears to us that admittedly the evidence of PW1 i.e. the injured gets no support from the remaining private prosecution witnesses since they became hostile though in his examination-in-chief, PW1 i.e. the injured/victim categorically stated that immediately after the alleged incident of firing the said private prosecution witnesses rushed to the spot and shifted him to local hospital. In this juxtaposition, a duty is cast upon us to come to a finding as to whether the sole testimony of PW1 can be believed or not and if the answer is in affirmative, to what extent.

19. As discussed above PW1 in his examination-in-chief categorically stated that as to when the alleged incident occurred and at which place. He had given a vivid description as to how he was taken by the present appellant to his house at the relevant hour and as to how he suffered bullet injury at his abdomen at the instance of the present appellant. In his cross-examination PW1 gave a clear picture that just before the alleged incident where he was standing at the house of the present appellant and from which side the appellant came out with a pipe gun and shot at him. On careful perusal of the rough sketch map as prepared by the I.O (Exhibit 8) it reveals to us that the description as given by PW1

with regard to the manner of occurrence of the incident gets due corroboration from the said sketch map and thus, it appears to us that PW1 has given convincing oral evidence with regard to the alleged incident. It further appears from the evidence of PW 12 (a Medical Officer of Malda District Hospital) and the bed head ticket i.e. Exhibit 5 (series) that immediately after the alleged incident the victim was taken to the said hospital and at the earliest opportunity he disclosed the name of the assailant before the said treating doctor. In view of such we find no reasons to disbelieve the testimony of PW1 who himself is an injured witness.

20. The evidentiary value of an injured witness have been discussed in a plethora of decisions of the Hon'ble Supreme court as well as various High Courts of our country and in one such case namely; **Mohar vs. State of U.P as reported in (2002) SCC 606 : AIR 2002 Sc 3279**. The Hon'ble Supreme Court expressed the following view:-

“The testimony of an injured witness has its own efficacy and relevancy. The fact that the witness sustained injuries on his body would show that he was present at the place of occurrence and had seen the occurrence by himself.”

21. In view of such proposition of law and in view of the discussion (supra), we have no hesitation to hold that the PW1 is a truthful witness since being an injured witness it is expected that he would honestly be interested in ensuring that the real culprits are punished.

22. In view of such we also have no hesitation to hold that the learned trial court is very much justified in holding that it is none but the

appellant who caused gunshot injury over the person of the victim i.e. PW1.

23. At this juncture a serious question of law arose as to whether learned trial court is at all justified in convicting the present appellant both under Section 326 I.P.C and under Section 307 IPC for the same and one offence.

24. In considered view of us the decision taken by our High Court in the reported decision of **Furkan Sk.** (supra) is very much relevant and the relevant portion of the said decision is reproduced hereunder:-

“17. Therefore, whether the culpability of the accused would fall under Section 307 or 326 of I.P.C would depend upon presence of distinguishable essential ingredients in a case of commission of offence under any of the above provisions. But essential ingredients of offences under both the aforesaid provisions, that is Sections 307 and 326 of the I.P.C cannot be present in case of commission of one and same offence. So , the impugned order of conviction of the appellant for commission of offence punishable under Section 307 as also under Section 326 cannot be sustained in law and the same requires interference in this appeal to the extent as may be discussed in the later part of this judgement.”

25. The same view was taken in the reported decision of **Meeting Sk.** (supra). In view of the above mentioned decision we are of the view that the learned trial court is not at all justified in convicting the present appellant both under Section 326 and under Section 307 IPC for the same and one offence and accordingly the conviction as awarded by the learned trial court under Section 326 IPC as against the present appellant stands hereby set aside. However, the conviction as recorded by the learned trial court as against the present appellant under Section 307 IPC stands hereby affirmed.

26. This is an appeal of 2009. Record reveals that since the day of passing of the impugned judgement, the present appellant is in custody that is for a period of more than 13 years. Accordingly, we restrict his sentence upto the period already undergone in judicial custody.

27. It is thus directed that the appellant Amir Chand Mondal be released at once, if not wanted in connection with any case.

28. Department is further directed to forward a copy of this judgement to the Superintendent of Beharampur Central Correctional Home, District Murshidabad where the present appellant is detained now.

29. Department is also directed to send another copy of this judgement to the Secretary, DLSA, Malda, for onward transmission of the same to the Superintendent of the Correctional Home where the present appellant is detained now.

30. With the aforementioned observation the instant appeal is disposed of.

31. Let a copy of this judgement along with the LCR be sent down at once by the Department.

32. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)