

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA  
Criminal Revisional Jurisdiction  
Appellate Side

Present:

The Hon'ble Justice Siddhartha Roy Chowdhury

CRR 456 of 2019

Barun Acharya & Anr.  
Vs.  
The State of West Bengal

For the petitioners : Ms. Puja Goswami, learned amicus curiae

For the State : Mr. Arijit Ganguly,  
Ms. Sujata Das

Heard on : 04.4.2023, 10.5.2023 & 17.5.2023

Judgment on : 19<sup>th</sup> May, 2023

The Court:

This Criminal Appeal challenges the judgement and order dated 26.6.2019 passed by learned Additional District and Session Judge, 7<sup>th</sup> F.T.C. Alipore in Sessions Trial Case No. 06(09) of 2009 corresponding to Sessions Case No. 02(04) of 2008, recording an order of conviction against Barun Acharya and Samim Akhtar, the appellants herein for committing offence under Sections 326/34 of the Indian Penal Code.

Briefly stated, Smt. Minu Mukherjee, wife of Joydeb Mukherjee filed a petition of complaint before the learned Additional Chief Judicial Magistrate, Alipore on 04.11.2006 stating *inter alia* that on 31.10.2006 at about 10.30 P.M. her husband Joydeb Mukherjee, along with his friend Dr. Sahidul Islam was on their way to home. Her husband Joydeb Mukherjee was restrained by the accused persons and was assaulted with Katari and rod. There was a hue and cry which attracted the appellant, she came out and rushed to this spot to rescue her husband when the accused persons snatched away the gold necklace from the injured and evacuated the place. The complainant further stated that her husband was rescued and was taken to Mahestala Police Station and therefrom to Vidyasagar S.G. Hospital, Behala. Mahestala Police Station recorded a G.D. vide G.D. Entry No. 1946 dated 31.10.2006. Delay was explained by the complainant. Learned Chief Judicial Magistrate forwarded the petition of complaint under Section 156(3) of Cr.P.C. to the jurisdictional Police Station and Mahestala P.S. Case No. 264 dated 27.11.2006 was registered. Police took up investigation which culminated into submission of charge sheet against the accused persons who stood the trial by pleading their innocence.

To bring home charges prosecution examined seven witnesses. Learned Trial Court after considering the evidence on record both oral and documentary was pleased to pass the impugned judgement holding the accused persons guilty for committing offence under Sections 326 of the Indian Penal Code read with Section 34 of Indian Penal Code and sentenced them to suffer rigorous imprisonment for three years and to pay a fine of Rs.40,000/- with a default clause subject to Section 428 of the Cr.P.C.

Ms. Goswami, learned counsel appointed as amicus curiae in this lis assails the impugned judgement on the ground that learned Trial Court failed to appreciate the evidence on record in its proper perspective. There was discrepancy in the petition of complaint that led to the registration of F.I.R. and in the testimony of the victim. According to Ms. Goswami, the victim Joydeb Mukherjee, at the time of alleged incident was with his friend Sahidul Islam. But Sahidul did not support the prosecution case as P.W. 2, he expressed his ignorance about the alleged incident. He was examined by prosecution in the light of Section 154 of the Evidence Act. But nothing came out to the help of the prosecution. The de facto complainant as P.W. 1 during cross-examination stated that there are many houses surrounding the house of de facto complainant. She came out being attracted by a hue and cry and stayed at the place of occurrence for about 20 to 25 minutes but none of her neighbours came to the spot. This testimony indicates that the alleged incident might not have occurred the way it was claimed by the de facto complainant or the victim. P.W. 1 further stated that she took her husband to the local police station on the very night her husband was bleeding but police only lodged a diary. This statement of P.W. 1 indicates that no cognizable offence took place as claimed by P.W. 1 or other prosecution witnesses on the night of 31.10.2006.

According to Ms. Goswami, the victim and his son both are facing criminal proceeding. An attempt was made to construct premises for commercial purpose in front of the house of the victim which the neighbouring people did not approve. The victim in order to settle its score gave a twist to the fact and implicated the accused

persons in a criminal proceeding though they were not responsible for the injury sustained by the victim.

According to Ms. Goswami, the testimony of P.W. 3, Joydeb Mukherjee is getting support from the testimony of P.W. 1 or P.Ws 4 and 5 who are the wife, daughter and son of P.W. 3 the victim. No independent witness came before the Court to support the testimony of victim. The doctor who attended the victim did not have any direct knowledge about the alleged incident. Exhibit – 2 is not sufficient to saddle the appellants in as much as the document do not suggest that the accused persons were responsible for the injury sustained by P.W. 3.

Ms. Das, learned counsel representing the State, however, submits that the victim Joydeb Mukherjee as P.W. 3 narrated the incident. He is getting support of the testimony of the attending physician P.W. 6 and Exhibit – 2 the Bed Head ticket. The victim sustained fractured injury and cut injury as stated by Doctor, P.W. 7. He had no reason to shield the real culprit and to implicate the innocent person. According to Ms. Das, the judgement impugned does not warrant any interference.

When the incident took place, according to P.W. 3, Joydeb Mukherjee, Sahidul Islam was with him. Both of them were on their way to home and in front of the house of Santi Banerjee, Barun Acharya and Samim Akhtar attacked him. Barun assaulted him with an iron rod and Samim had a Katari which he used. As a result, Joydeb sustained bleeding injury on his finger. The blow of iron rod landed on the left hand of victim. According to P.W. 3 it was his son Somnath Mukherjee who took him to Mahestala Police Station not his wife P.W. 1. The matter was reported verbally to Mahestala Police Station and on 01.11.2006 he was admitted at Vidyasagar S.G.

Hospital, Behala, he remain admitted there for 23 days. P.W. 3 further stated that he was about to construct a building for factory in front of his house and the accused persons demanded a sum of Rs.50,000/- for that, as he refused to pay the said amount, he incurred the displeasure of the accused persons and ultimately he was beaten up. He was cross-examined thoroughly. During cross-examination, other than Dr. Sahidul he did not notice anybody else at the time of incident. He cried out at the time of incident. Police came to the place of occurrence within 30-45 minutes of the incident. He denied the suggestions that he was not assaulted by the accused persons.

P.W. 6, Dr. Diptendu Bikash Sen Gupta, attended the victim at Vidyasagar S.G. Hospital, Behala on 01.11.2006 at about 7.21 AM. Joydeb Mukherjee was under his treatment till 23.11.2006 when he was discharged.

According to P.W. 6 Barun Acharya the victim told him the history of assault. Barun Acharya assaulted him by iron rod and Samim by bhojali. He found one incised wound about 1 and half inch X half inch X half inch in the web between right thumb and index finger, another incised wound half inch X half inch X half inch on the pulp of right thumb, multiple Parallel lines of bruise on the back, one abrasion on both knees, swelling with bruise on left elbow, swelling on the left wrist apart from tenderness on right side of chest and swelling on left wrist which ultimately was found to be fractured on mid shaft of left ulna.

During cross-examination suggestion was given as to the different manners by which the patient could sustain injuries as sustained by Joydeb Mukherjee, the doctor admitted that those injuries were not endangering to human life.

In my considered opinion when the injured P.W. 3 is getting support from the testimony of the attending doctor, P.W. 6 and when both the witnesses are found to have withstood the test of cross-examination, there should be no reason to interfere with the order of conviction passed by the learned Trial Court.

The I.O. was dead when the witness action was going on. However, that is not sufficient to wipe out the testimony with the injured witness and the attending Doctor P.W. 6.

True, it is the prosecution case suffers from discrepancies, there is exaggeration on the part of P.W.s 1, 2 and 3 but those discrepancies or exaggeration in my opinion do not strike at the root of the prosecution case. Every prosecution case is bound to suffer from discrepancies and exaggeration. When a case is proved perfectly it is said that case is tailor made which is why it is free from any defect. When some deficiency appears in the prosecution case it is said that the case has not been proved beyond doubt.

In order to appreciate the prosecution case, the testimony of the witnesses are to be considered in the light of human probability. Some discrepancies are bound to be there in every prosecution case. If such discrepancies are in the shape of pebbles, Court should have no hesitation to tread upon it.

I do not find any reason to interfere with the judgment impugned. The appeal merits no further consideration and is dismissed, however, without any order as to costs.

Before parting with the case, I place on record my sincerest appreciation to the service rendered by Ms. Puja Goswami, as amicus curiae.

Let a copy of the order along with lower court record be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury,J )

SB  
Item No. 12