

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 458 of 2019
CRAN 1 of 2022

JOYDEB HALDER
VS.
THE STATE OF WEST BENGAL

For the Appellant	: Mr. Biplab Mitra, Adv. Ms. Trina Mitra, Adv.
For the O.P.	: Mr. Swapan Kumar Mallick, Adv. Ms. Sudeshna Das, Adv.
For the State	: Mr. Anasuya Sinha, Adv. Mr. Pinak Kr. Mitra, Adv.
Hearing concluded on	: 19 th January, 2023
Judgement on	: 31 st January, 2023

Siddhartha Roy Chowdhury, J.:

1. This criminal appeal challenges the judgement and order of conviction passed by learned Additional Sessions Judge, Fast Track 3rd Court, Diamond Harbour, South 24 Parganas in S.T. No. 02 (02) of 2012, S.C. No. 06(01) of 2011, whereby learned Trial Court was pleased to record an order of conviction against 16 accused persons out of whom 15 were found guilty for committing offence under Section 323/148 of the Indian Penal Code and sentenced to pay fine of Rs. 250 each with default clause.

2. The convict Joydeb Halder has been sentenced to suffer simple imprisonment for six months and to pay fine of Rs. 2000/- for committing offence under Section 326 of the I.P.C.
3. On 13th August, 2007 one Subal Halder filed a petition of complaint before the learned A.C.J.M., Diamond Harbour, South 24 Paranagas against 17 accused persons stating inter alia that on 26th June, 2007 around 7.00 p.m. the accused persons forming an unlawful assembly attacked the petitioner, Baghyaram Halder, Bachaspati Halder and Prabhiti Halder, with deadly weapons like bhojali, iron rod, lathi etc. and assaulted them. The incident took place near the house of Gurupada Baidya. Accused Joydeb Halder landed a blow of iron rod on the hand of the petitioner and petitioner sustained fracture injury. Ananga Mohan Halder assaulted him by bhojali on his belly. They also assaulted Bhagyaram Halder. Thereafter, the accused persons dragged them to the house of Nibas Halder where they were kept confined. Gangaram Halder, however, could inform Raidighi Police Station. Police came and rescued the complainant and two other persons from the house of Nibas Halder. They were sent to Raidighi Hospital. They remained in the hospital as indoor patient, where the attending physicians managed the injuries. The complainant was sent to Nil Ratan Hospital, Kolkata where he was admitted from 19th July, 2007 to 19th August, 2007.
4. Learned A.C.J.M., Diamond Harbour forwarded the petition of complaint to the Officer-in-charge of Raidighi Police Station under

Section 156 (3) of Cr.P.C. and Raidighi P.S. Case No. 2 was registered on 5th January, 2008.

5. Police took up investigation and submitted charge sheet against the accused persons who stood trial by pleading innocence.
6. In order to crown success prosecution examined as many as 14 witnesses and learned Trial Court after considering the evidence on record both oral and documentary was pleased to pass the judgement impugned. 15 convicts accepted the judgement and paid fine as imposed by learned Trial Court while Joydeb Halder challenged the judgement of learned Trial Court in appeal.
7. Upon perusal of the judgement impugned, I find that learned Trial Court took note of the fact that accused Joydeb Halder, the appellant before this Court, assaulted the de-facto complainant Subal Halder with an iron rod on hand, and as a result, he sustained fracture injury. Subal Halder as P.W. 4 stated that Joydeb Halder assaulted him by iron rod and he sustained fracture injury. Therefore, learned Trial Court had no reason to record an order of conviction under Section 326 of the I.P.C. against the convict/appellant Joydeb Halder. Section 326 of the I.P.C. envisages :-

“326. Voluntarily causing grievous hurt by dangerous weapons or means—Whoever, except in the case provided for by section 335, voluntarily causes grievous 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 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

8. However, the testimony of P.W. 4 coupled with medical report Exhibit-3 unerringly suggests that the victim Subal Halder sustained fracture injury caused by the appellant and thereby the appellant has made himself culpable for committing an offence within the meaning of Section 325 of the I.P.C.
9. The de-facto complainant Subal Halder who is the victim as well entered into appearance and submitted an application being CRAN 1 of 2022 stating inter alia that the victim and the assailant are neighbours who have been living in peace after wiping out their dispute and differences and both the appellant and the de-facto complainant victim want to compound the offence. An application has been filed to that effect. When the de-facto complainant and the appellant are staying in the same neighbourhood in peace after settling their dispute amicably, considering the nature of offence, I do not find any reason to stand in the way. The compromise between the victim and the accused appellant under such facts and circumstances of the case, is accepted and the judgement impugned is set aside.
10. Thus, the appeal is disposed of along with CRAN 1 of 2022. The appellant is discharged from bail bond.

11. Let a copy of this judgement be sent down along with lower Court record to the learned Trial Court for information and necessary compliance.
12. Urgent photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)