

17.1.2023
Item No.06
BR

CRR 2409 of 2007

In the matter of : Bholanath Mahato

Accused /petitioner

Mr.Sumanta Chakraborty
Mr. S.B.Mukherjee

.... For the Petitioner

Mr. N.P. Agarwal,
Mr. P. Bose For the State

The matter is pending since 2007.

Under such circumstances I propose to dispose of the criminal revision on merit based on materials available with the record.

The petitioner Bholanath Mahato was found guilty for committing offence within the meaning of Section 326 of the Indian Penal Code. On 7th November, 2006, the petitioner made an unsuccessful attempt to get the order of conviction reversed by preferring criminal appeal No. 15 of 2006. The learned Additional Sessions Judge, Fast Track Court No. 2 , Purulia refused to accept the appeal and thereby affirmed the order of conviction passed by learned trial Court, thus the petitioner has preferred the criminal revision under consideration.

Briefly stated on 28th February, 1996 at about 6 p.m. Bholanath Mahato assaulted Jagannath Mahato in front of his house with 'Tangi' and because of such assault the middle finger and left middle finger and left ring finger were chopped off from his hand. The victim informed the police in writing and Arsha P.S. Case No. 17 of 1996 was registered on 28th February, 1996. Police took up investigation which was culminated into submission of charge sheet against the accused person. On 1.4.2003 trial was commenced. Prosecution examined 10 witnesses including the victim as well as the Medical Officers. Considering the evidence on record, particularly the oral testimony of the victim who adduced evidence as P.W. 1 and the Doctor who attended the victim, learned trial Court was pleased to hold that the accused person who is the petitioner before this Court, committed offence within the meaning of Section 326 of the Indian Penal Code. Challenging the impugned judgment affirming the order of conviction Mr. Sumanta Chakraborty, learned counsel for the petitioner submits that the learned trial Court failed to appreciate the case properly. There was discrepancy in the name of the father of the victim as appearing in the F.I.R. and in the injury report. The FIR was not forwarded to jurisdictional Magistrate for six months. The incident took place on 28th February, 1996

while the FIR was forwarded in the month of August, 1996. This unexplained delay, according to Mr. Chakraborty is sufficient to fetch benefit of doubt to the accused/petitioner. The Investigating Officer did not recover the alleged weapon of assault and the accused person was not arrested for more than six months. Drawing my attention to the oral testimony of PW 1 where he stated that as a middle man when the victim came between dispute of the accused and his brother he was assaulted. Mr. Chakraborty, learned counsel for the petitioner, suggests that the injury could have been accidental and absence of mens rea on the part of the accused person ought to have been considered by the learned trial Court. Mr. Chakraborty further submits that none of the witnesses examined by the prosecution corroborated the version of the victim. Learned appellate Court had good reason to reverse the finding of learned trial Court solely on the ground of lack of corroboration.

I have perused the evidence on record. PW 1 stated that he was assaulted by the accused/petitioner and he sustained injury on three places. He sustained cut injury on his lips and his teeth were dislocated. He was assaulted from a distance of about one feet. It is his further evidence that the accused person landed blow of 'Tangi' and chopped his two fingers of his left

hand . The Doctor PW 6 who attended the injured referred to District Hospital by Arsha S.H.C. found sharp cut injury over the left hand with amputation of left middle finger and almost complete amputation of left ring finger . That apart, the Doctor found stitch over the sharp cut injuries on the elbow. During cross-examination the wife of the victim as PW 4 stated that two fingers of her husband were left lying on the road and he showed the place where the incident took place and the blood stained soil.

Though PW 4 was not witness to the occurrence but her testimony is lending support to the testimony of PW 1 and PW 6 and in my humble opinion the prosecution has been able to prove the charge under Section 326 of the Indian Penal Code beyond reasonable doubt. I find no reason to interfere with the finding of the learned Appellate Court affirming the order of conviction . The criminal revision is bereft of any merit and is dismissed, however, without costs.

The petitioner is directed to surrender to the jurisdiction of learned trial Court within four weeks from date to serve out the sentence , in default the learned trial Court will be at liberty to secure his presence and send him to the Correctional home to serve out sentence subject to the provision of Section

428 of the Criminal Procedure Code as imposed by the learned trial Court.

Copy of this order be sent down to the learned trial Court for information and necessary action.

Urgent certified copy ,if applied therefor, be supplied upon compliance of usual formalities.

(Siddhartha Roy Chowdhury, J.)