

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 481 of 2019

SANJOY ROY
VS.
THE STATE OF WEST BENGAL

For the Appellant : Mr. Kallol Mondal, Adv.
Mr. Krishan Roy, Adv.
Mr. Souvik Das, Adv.
Mr. Anamitra Banerjee, Adv.
Mr. Samsheer Ansari, Adv.

For the Respondent : Ms. Sreyashee Biswas, Adv.

Hearing concluded on : 17th January, 2023

Judgement on : 31st January, 2023

Siddhartha Roy Chowdhury, J.:

1. Challenge in this appeal is to the judgement and order of conviction passed by learned Additional Sessions Judge, Fast Track, 2nd Court Bongaon, North 24 Parganas, in Sessions Trial No. 126 of 2015 on 10th July, 2019.
2. Briefly stated, on 14th November, 2010 one Pagal Bar of Baliadanga informed the Officer-in-charge of Bagdah Police Station in writing that on 14th November, 2010 at about 4.00 p.m. an altercation took place between his wife Durga Rani Bar (now deceased) and his neighbour Chanchala Rani Bar. Suddenly Sanjoy Roy, son-in-law of Chanchala

Rani Bar came and landed a blow of wooden stick made of palm tree on the head of Durga Rani Bar. Durga Rani Bar sustained injury on her head. Her daughter Bharati Singh and granddaughter Sadhana Bala rushed to rescue her when Sanjoy Roy assaulted both of them as well with the said wooden stick and made them suffer injuries. Durga Rani Bar and her granddaughter Sadhana Bala were admitted to Hospital. The information since disclosed offence cognizable in nature Bagdah P.S. Case No. 339 of 2010 was registered. Police took up investigation which culminated into submission of charge sheet.

3. On 28th June, 2013 trial was commenced and the accused Sanjoy Roy stood the trial, pleading his innocence. To bring home charges prosecution examined as many as 14 witnesses.
4. Learned Trial Court upon perusal of the evidence both oral and documentary was pleased to record an order of conviction against the accused Sanjoy Roy for committing offence punishable under Section 308 of the I.P.C. and Section 325 of the I.P.C. and sentenced him to suffer imprisonment for three years, and to pay fine of Rs. 10,000/- for committing each of the offences subject to the provision of Section 428 of the Code of Criminal Procedure. Hence the appeal.
5. Mr. Kallol Mondal, learned Counsel representing the appellant assailing the impugned judgement submits that learned Trial Court failed to appreciate the evidence led by the prosecution witnesses and learned Trial Court had no reason to hold that prosecution proved the charges beyond reasonable doubt. Drawing my attention to the testimony of P.W. 1, who set the criminal administration of justice into

motion, Mr. Mondal submits that P.W. 1 stated that complaint was lodged after 10-15 days of the incident. Police, according to P.W. 1, visited his house on the very night of the incident and he narrated the entire fact to police. Therefore, Mr. Mondal submits that there is every reason to presume that no cognizable offence was committed by the accused person on the date of alleged incident, otherwise police would have registered a case on that very night under Section 154 of Cr.P.C. Therefore, unexplained delay of 10-15 days strikes at the root of the case of prosecution. Oral testimony of P.W. 1 indicates that the victim did not suffer injuries being assaulted by Sanjoy Roy, as alleged. It is further contended that P.W. 1 in his oral testimony stated about the inimical relation between the two families. In the backdrop of such enmity between the family of victim and the accused person, the possibility to rope in the accused person in a case with criminal liability cannot be ruled out. The victims did not disclose the name of the assailants to the attending doctors. Aparna Bar, P.W. 4 stated that Sanjoy Roy landed the blow on the head of her mother-in-law, standing in front of her which is not getting support from the injury report or the testimony of the doctors. On this ground, learned Trial Court ought to have extended benefit of doubt to the accused person.

6. In this case three persons sustained injuries. Durga Rani Bar could not adduce evidence in this case. She passed away before the trial was commenced. Bharati Singh, the daughter of Durga Rani Bar and one of the victims, adduced evidence and stated that on 14th November, 2010 at about 4.00 p.m. a quarrel took place between her

mother Durga Rani Bar and Chanchala Rani Bar over throwing of garbage. Chanchala Rani Bar used filthy language towards her mother and Sanjoy Roy came out from the room with a stick of palm tree and landed the blow on the head of her mother who sustained fracture injury on the head. Sadhana Bala went to save Durga Rani Bar, she was assaulted in the same manner. P.W. 2 when reached the spot Sanjoy Roy assaulted her with the said piece of wooden stick on her left hand. They screamed, neighbouring people rushed to the spot and accused was handed over to police. Her mother was initially taken to Rural Hospital, Bagdah, from there she was shifted to Bangaon Sub-Divisional hospital, then to R.G. Kar Medical Hospital and finally to P.G. Hospital. She was treated at Bagdah Rural Hospital along with her niece who was admitted to Rural Hospital, Bagdah. During cross-examination she stated that there was boundary dispute between her father and Chanchala Rani Bar. The accused Sanjoy Roy landed the blow on the head of her mother. She informed the attending physician as to how she sustained injuries. P.W. 3 Sadhana Bala is the other victim who also stated that on 14th November, 2010 at about 4.00 p.m. her grandmother Durga Rani Bar got entangled in an altercation with Chanchala Rani Bar. Suddenly Sanjoy Roy came and assaulted her grandmother and she lost her sense. Bharati Singh and she herself tried to save Durga Rani Bar but both of them were assaulted by Sanjoy Roy. Sanjoy Roy assaulted her on the head and Bharati Singh on her hand. She was cross-examined but nothing has come out to impeach the credibility of P.W. 3. So is the evidence of P.W. 4 and P.W.

5. P.W. 14 Dr. Somnath Ghosh, attended the injured persons as Medical Officer of Bagdah Rural Hospital and found swelling over occipital region of head, bruise and swelling over left and right forearm, swelling over left ankle of Bharati Singh. He issued the injury report admitted as Exhibit-8. He also attended Durga Rani Bar and found depressed fracture on the left scalp with active bleeding. On examination of Sadhana Bala he found 4 c.m. wound over the scalp and he managed the injury by stitching the same. During cross-examination he stated that he did not record history of injury nor it was disclosed by the victims.

7. It is the specific case of the prosecution that incident took place on 14th November at about 4.00 p.m. and FIR Exhibit 3 indicates that the case was registered on 15th November, 2010 treating the relevant information as part of FIR and endorsement on relevant information suggests that it was received at 0005 hours on 15th November, 2010. On that date police seized one piece of wood stained with blood and one piece of palm wood nearly 36 inches in length from eastern side of the house of Pagal Bar. These two documents negate the testimony of P.W. 1 that FIR was registered after 10-15 days. The injury report Exhibit 8, 8/1 and 8/2 suggests that victims were attended by the doctor of Bagdah Rural Hospital immediately after the incident on 14th November, 2010 in between 5.20 p.m. to 5.30 p.m. The testimony of the Investigating Officer, P.W. 13 indicates that he arrested the accused person Sanjoy Roy from his in-laws house and forwarded him to Court and he seized blood stained Babul tree log and palm wood

stick under the seizure list. P.W. 12 doctor Ashok Mouli examined Durga Rani Bar on 16th November, 2010 and on performing the C.T. Scan of her head he found fracture on the left side of frontal bone and anterior end of left parital bone. Over lying sculp was swollen. There was minimal contusional edema and some pockets of entrapped air in the frontal and entire hemispheric region. There was depressed fracture on left fronto parital with minimal contusional edema and pneumo caphalus.

8. Upon perusal of the oral testimony of P.W 2 and P.W. 3 Bharati and Sadhana two of the three victims, I find ring of truth in their testimony who are getting support from the testimony of medical officers, attended them as well as attended Durga Rani Bar, Doctor Somnath Ghosh P.W. 14 and Doctor Ashok Mouli P.W. 12.
9. Mr. Mondal strenuously argued that non examination of alleged weapon of assault should be considered to be fatal for the prosecution case particularly when the testimony of P.W. 4 Aparna Bar is not supporting the testimony of P.W. 2 and P.W. 3.
10. The factum of arrest and the document Exhibit 2 and Exhibit 3 should prevail over the oral testimony of P.W. 1 to the effect that the FIR was lodged after 10-15 days. In the same manner the oral testimony of the victims P.W. 2 and P.W. 3 should prevail over the oral testimony of P.W. 4 Aparna Bar. P.W. 2 and P.W. 3 are getting support from the testimony of P.W. 12 and P.W. 14 as well as from documents admitted as Exhibit 8, 8/1 and 8/2. When I find P.W. 2 and P.W. 3 have withstood the test of cross-examination and P.W. 12 and P.W. 14

are lending support to their testimony, I feel no hesitation to hold that the accused person committed offence. Non-examination of weapon of assault is of no consequence. The impugned judgement does not warrant any interference and it is affirmed. Consequently appeal fails. The appellant is directed to surrender to the jurisdiction of learned Trial Court within two weeks from date to serve out sentence, failing which learned Trial Court will be at liberty to take step according to law to make the convict serve out the sentence subject to provision of Section 428 of the Cr.P.C.

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.)