

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present :

The Hon'ble Justice:- **Bibhas Ranjan De**

CRA (SB) 132 of 2022

Dubraj Mahato @ Bapi

-Vs-

The State of West Bengal .

For the appellant:	Mr. Abhra Mukherjee Mr. Sauradeep Dutta Mr. S. K. Mondal,
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For the State respondents:	Mr. Avijit Ganguly Mr. Avik Ghatak,
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Heard on	22.06.2023
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Judgment on:	22.06.2023.
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Bibhas Ranjan De, J.

1. Judgement and order of conviction passed on 07.09.2022 by the learned Additional Sessions Judge, 3rd Court, Purulia, convicting the appellant Dubraj Mahato under Sections

323/324/327 of the Indian Penal Code (hereinafter referred to IPC) is challenged in this appeal.

2. In this case, initially law was put into motion by lodging a written complaint by one Bharat Chandra Mahato, a village doctor by profession, resident of Koreng, District-Baghmundi, alleging, inter alia, that on 25.08.2017 at about 9.30 p.m., one Dubraj Mahato of Burda village came to his chamber at Koreng village and asked him to go to his house for treatment forcibly but the doctor/complainant could not response due to assembly of patients in his chamber. Thereafter, Dubraj Mahato abused him in filthy language and left the place. After a while, Durbraj Mahato again came to his chamber along with a choper (Katari) and asked the doctor to go to his house but after being denied the accused Dubraj Mahato gave a blow on his neck but somehow the doctor/complainant saved himself and sustained ear cut injury. It was further alleged that he sustained bleeding injury of his right ear. All the incident occurred in the presence of all the patients. On receipt of the written

complaint at 10.45 hours, Baghmundi PS Case No. 46 of 2017 dated 25.04.2017 under Sections 341/323/307/506 IPC was started.

3. Police investigated the case and on completion of investigation submitted charge sheet being No. 50 of 2017 under Sections 341/323/307/506 IPC.
4. Learned Trial Judge framed charges on 8.07.2018 under Section 323/324/307/506 part-II of the IPC. Prosecution examined 10 witnesses including the complainant, doctor and other local people as P.W.1 to 10 respectively. In course of their evidence, written complaint and signature thereon, injury report and formal FIR, seizure list were admitted in evidence as Exhibits (series) 1 to 4. Learned Judge after evaluation of the evidences particularly relying on the evidence of P.W.1 and that of the doctor P.W.9, returned his finding that prosecution succeeded to prove the charge under Sections 323/324/307 of the IPC.
5. In course of argument, Mr. Abhra Mukherjee, learned advocate appearing for the appellant has pointed out some

material discrepancies and contradictions in the evidence as well as made an effort to create a reasonable doubt in the minds of this court regarding seizure of the offending weapon.

6. Mr. Mukherjee has further submitted that though the complainant (P.W.1) sustained bleeding injury as alleged in this case, his wearing apparels was neither produced before the I.O. nor the I.O. took any effort to seize the blood stained wearing apparels. It is submitted that during evidence P.W.1 specifically stated that one Mrityunjoy Mahato and Lakshman Mondal were present and took him to Pathardihi B.P.S.C., Baghmundi. Both of them did not support the case of the prosecution save and except the dispute between the doctor and the accused.
7. Mr. Mukherjee has further argued on the issue of FIR by referring to the evidence of witnesses testified that the police reached the place of occurrence at 8-30 p.m. though written complaint was lodged at 10.45 p.m. by the complainant himself and thereafter Mr. Mukherjee has tried to make this

court understand that police duly received an information of a cognizable offence prior to 8-30 p.m.

8. In opposition to that, Mr. Avik Ghatak, learned advocate appearing on behalf of the State, has pointed out that it was an incident of assault by a sharp cutting weapon that too on a vital part of the body. He referred to the evidence on record and submitted that the evidence of the de-facto complainant was duly corroborated by local witness i.e. P.W.3 and P.W.4 and that was further buttressed by the evidence of doctor (P.W.9) who treated the injured immediately after the incident alleged in this case.
9. Before parting with, Mr. Ghatak by referring to Section 465 Cr.P.C. submitted that even lodging of successive FIR shall not prejudice to the accused.
10. With regard to the First Information report prior to visiting the place of occurrence by the police at 8.30 AM, I am in full agreement with the Mr. Ghatak that even there are successive information given to the police cannot cause any prejudice to the accused.

11. From the evidence of PW-1, it is found that at the time of incident of assault by choper (Katari), there were many patients in the chamber of the Doctor and not only that PW-1 mentioned particularly two names Mrityunjoy Mahato (PW-6) and Lakshman Mondal (PW-5), who were present at the time of alleged incident. It is needless to mention that none of the patients was examined in the case. PW-5, Lakshman Mondal has stated in his evidence that there was dispute between Bharat Chandra Mahato (PW-1) and accused and he heard the accused assaulted Bharat Chanda Mahato but he did not see any occurrence.
12. PW-6, Mrityunjoy Mahato also harped on the same string of dispute between Bharat Chandra Mondal and accused person. PW-2, PW-7 and PW-8 resident of village Koreng i.e the same village where the incident alleged to have been occurred, declared hostile by the prosecution, as they did not support the prosecution case. PW-4 has stated that he remaind present at the time of incident and he was a man of

Koreng village but nowhere from the evidence it is found that he remained in the chamber as a patient of Doctor. PW-4 in his evidence testified that at the time of alleged incident he did not enter into chamber of Bharat Chandra Mahato. Later on he heard that accused Dubraj Mahato assaulted Bharat Chandra Mahato on his ear by sharp cutting weapon.

13. Therefore, from the entire evidence, I find only PW-4 tried to establish the alleged incident by saying that he remained in the chamber of the Doctor on the alleged date and time, but from his evidence it is seen that he remained there as a patient in terms of evidence adduced by the de-facto complainant (PW-1). PW-9 is a Doctor who treated the injured (PW-1) on 25th April, 2017 at 8.10 PM and on examination he found sharp cut injury on the right ear of the patient and swelling was present on the face and different parts of the body of the patient. But PW-1 himself stated that he visited Doctor at 11. PM after lodging First Information Report to the police at 10.45 PM. Now I fail to

make me understand that how the Doctor could examine the injured at 8.10 PM?

14. It is evident from the record that the accused left the place leaving behind the offending weapon in front of the house of Doctor, but from the seizure list it is found that the sharp cutting weapon was recovered from the possession of accused as shown and produced by the accused himself. But, there is nothing on record about any statement leading to recovery under Section 27 of the Evidence Act, far to speak of admission of relevant portion of the statement in evidence. On the seizure list it is found that seizure was made in presence of two witnesses (Mritunjoy Mahato PW-6 and Laxman Mandal PW-5). From the evidence of two seizure witnesses, I find that police brought a "Katari" from the place near the chamber of Bharat Chandra Mahato and asked him to sign on paper, he did not know anything about content of that paper. PW-6 also echoed same evidence thereby, seizure of offending weapon became doubtful.

15. From the written complaint (exhibit-1) and evidence of injured (PW-1), it is found that injured sustained bleeding injury after receiving a blow of sharp cutting weapon at the time of incident. It is also evident from the record after sustaining injury his wearing apparels became blood stained. But neither those blood stained wearing apparels was handed over to I.O, nor the I.O. took any effort to seize those blood stained wearing apparels.
16. Considering all evidence adduced at the behest of the prosecution it can, at best, be said that the prosecution has succeed to prove a dispute between the Bharat Chandra Mahato (PW-1) and the accused, nothing else.
17. In the aforesaid view of the matter, I find that appellant/accused is entitled to be acquitted from the charge framed in this case.
18. Accordingly, the judgment and order of conviction passed by the learned Additional Sessions Judge, 3rd Court, Purulia stands set aside.

19. The appellant/accused be set at liberty once again and be discharged from his bail bond.
20. With the aforesaid observation the Criminal Appeal stands disposed of.
21. Let the copy of the judgment along with Trial Court Record be sent back immediately.
22. Urgent photostat certified copy of the Judgment, if applied for, be given to the parties on usual undertakings.

(Bibhas Ranjan De, J.)