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C.R.A. (SB) 154 of 2022

Mr. Debasis Singha and others
Versus
The State of West Bengal and another

Mr. Partha Sarathi Bhattacharyya,
Ms. Swarnali Saha,
Mr. Subhas Atta.
...for the appellants.

Mr. Saswata Gopal Mukherjee, Ld.P.P.,
Mr. Sandip Chakraborty,
Mr. Saryati Datta.
...for the State.

The present appeal was preferred challenging the order of conviction and sentence dated 26.09.2022 and 27.09.2022 by the learned Additional Sessions Judge, Fast Track Court, Bankura in Sessions Trial No.22 of 2019 arising out of Sessions Case No.47 of 2019, wherein the trial court was pleased to convict the appellants under Sections 325/34 of the Indian Penal Code.

Mr. Partha Sarathi Bhattacharyya, learned advocate appearing for the appellants has placed his case and argued for acquittal of the appellants.

Mr. Saryati Datta, learned advocate appearing for the State, on the other hand, has resisted the submissions of Mr. Bhattacharyya.

However, a detailed reasoning at this stage is not required as on inspection of the records it is found that in the examination under Section 313 of the Code of Criminal Procedure to

each of the accused persons which was conducted by the learned trial court, no answer is appearing in respect of question nos.8 and 9. Question nos.8 and 9 in the examination under Section 313 of the Code of Criminal Procedure as conducted by the learned trial court is set out as follows:

“Q8 PW-8 Dr. Satabdi Mondal stated in his evidence that on 11-02-2019 one Biswanath Garai was brought to their BPHC with a history of physical assault inflicted by you and other accused persons by means of iron rod and he examined him and found cut injury on right leg and backache and pain at right thigh. Have you anything to say against this?

Q9 PW-9 Biswanath Garai stated in his evidence that on 27th Magh last year when he was returning home from his fishery (pukur) namely Banerjee Bandh and reached near their village school at about 1:30 p.m. at that time you and other accused persons attacked him with iron rod and sticks and you and other accused persons also assaulted him at random by means of lathi and he fell down on the road and sustained bleeding injuries and also sustained fracture injury on his right leg and also left leg as well as on back. Have you anything to say against this?”

So far as the question no.9 is concerned, it assumes importance as the conviction order is on the foundation of the facts with which the question was confronted to each of the accused

persons. The same remaining blank has seriously prejudiced the accused persons. However, an omission in writing the answer cannot be a foundation of an acquittal.

Considering the outcome of the case that the appellants were convicted by the learned trial court, I am of the opinion that they are entitled to an opportunity afresh for answering the question which is one of the cause of action for registration of FIR and subsequent trial.

Accordingly, the judgment and order of conviction and sentence dated 26.09.2022 and 27.09.2022 is set aside. The case is again remanded back to the learned trial court to conduct the trial of the case. Learned trial court would start afresh from the stage of Section 313 of the Code of Criminal Procedure, after completion of the same grant opportunity to the defence to adduce defence witness, if any, and thereafter pronounce judgment in accordance with law.

The appellants are on bail. They would continue on the same bail but would submit a fresh bond of Rs.100/- each before the learned trial court.

Accordingly, CRA(SB) 154 of 2022 is allowed.

Appellants are directed to appear before the learned trial court on 15th June, 2023. The learned trial court would follow the observations made above and proceed with the trial of the case.

Pending application, if any, is consequently disposed of.

Department is directed to send back the lower court records immediately.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)