

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 682 of 2018

TAIMUNA BIBI

VS.

THE STATE OF WEST BENGAL & ORS.

For the Appellant	: Mr. Kallol Mondal, Adv. Mr. Krishna Ray, Adv. Mr. Souvik Das, Adv. Mr. Ayan Mondal, Adv. Mr. Samsheer Ansari, Adv.
For the Respondent	: Mr. Arindam Jana, Adv.
For the State	: Mr. Joydeep Roy, Adv. Ms. Sujata Das, Adv.
Hearing concluded on	: 21 st March, 2023
Judgement on	: 30 th March, 2023

Siddhartha Roy Chowdhury, J.:

1. This criminal appeal challenges the judgement and order of acquittal passed by learned Judicial Magistrate, 1st Court, Contai in T.R. Case No. 575 of 1999 corresponding to G.R. Case No. 886 of 1998 arising out of Egra Police Station Case No. 129 of 1998 dated 15th December, 1998.
2. Briefly stated, Taimuna Bibi, the appellant herein set the proceeding into motion by informing the Officer-in-charge of Egra Police Station about an incident that took place on 23rd November, 1998 on the arable land of her family situated at a distance of 8 to 10 bighas of land from her house. It was stated that apprehending damage to the crops

due to accumulation of water over the arable land caused by continuous rain for nearly 2 days, her husband went there to cut Aal to remove the excess water when Rashid Khan along with her brother-in-law, nephew and son came there and restrained her husband from removing the water. They all were armed with deadly weapons like stick, knife and bhali. The accused persons assaulted him and made him suffer bleeding injuries. They snatched gold chain worth Rs. 5000/-. Younger son of the informant having found such condition of his father came back to his house and informed the family members. The informant along with others rushed to the place of occurrence to rescue the victim Shamsul. Even they were prevented by the accused persons. The accused persons evacuated the place of occurrence with the advent of local people. The informant took her husband to Egra Hospital with the help of local people. His hands got fractured. He had other injuries as well.

3. The information since disclosed offence cognizable in nature Egra P.S. Case No. 129 of 1998 was registered under Section 148/149/323/324/325/379 of the Indian Penal Code. Police took up investigation which culminated into submission of charge sheet against the accused persons. The accused persons stood the trial pleading their innocence.
4. To bring home charges prosecution examined as many as 10 witnesses. Learned Trial Court, however, after considering the evidence on record observed that prosecution failed to prove the charges beyond reasonable doubt and thus passed the impugned judgement.
5. Since Rashid Khan passed away on 24th July, 2022, the appeal stands abetted as against respondent Rashid Khan.

6. Mr. Kallol Mondal, learned Counsel representing the appellant impeaches the impugned judgement by submitting, *inter alia*, that learned Trial Court failed to appreciate the evidence on record in its proper perspective.
7. According to Mr. Mondal, P.W. 2, the victim is getting support from the testimony of P.W. 10, the attending doctor, Harekrishna Giri who stated that on 23rd November, 1998 at about 2.30 a.m. he examined Sk. Samsuddin and the injury report Exhibit-3 corroborates the testimony of P.W. 2.
8. P.W. 7, according to Mr. Mondal, is the other witness who was with the victim at the time of incident. Sk. Nasim, P.W. 7, son of the victim stated that Rashid Khan assaulted his father by bhali while Giasuddin assaulted him with knife and other assaulted him with lathi. His father sustained injury on his head, ear and two hands. He could not say by what instrument his father was assaulted and by which of the accused persons. His father sustained bleeding injury and fracture injury on his hands. During cross-examination he could not remember if he told police that Rashid Khan assaulted his father by bhali, Giasuddin assaulted his father by knife and others assaulted him with lathi.
9. Refuting such contention of Mr. Mondal, Mr. Arindam Jana, learned Counsel for the private respondent submits that prosecution need to prove the charges beyond reasonable doubt and in this case there is no such clinching evidence. It is further submitted by Mr. Jana that there is delay in informing the police. Though the de-facto complainant claimed to have informed the police on the date of incident but the FIR was registered on 15th December, 1998. There was no

explanation for delay of more than 20 days. This factor alone is sufficient to throw the prosecution case overboard.

10. Drawing my attention to the injury report Exhibit-3, it is submitted by Mr. Jana that the person attended by doctor, P.W. 10 and the husband of the de-facto complainant are not identical person. The victim is known as Sk. Samsuddin. He adduced evidence as P.W. 2. P.W. 7, Sk. Nasim is son of Sk. Samsuddin. But the doctor issued the injury report relying upon the X-ray plate that contains the name of Sk. Samsul and there is no evidence to indicate that Sk. Samsul and Sk. Samsuddin is identical person.

11. My attention is drawn to the injury report Exhibit-3 which was prepared on 11th December, 1998. The injury report does not indicate the fact that on 24th November, 1998, Sk. Samsuddin was examined by doctor. Therefore, according to Mr. Jana, prosecution case cannot be said to have been proved beyond reasonable doubt and learned Trial Court was absolutely justified in passing the impugned judgement.

12. Upon perusal of the evidence on record, I find that in her written information the de-facto complainant P.W. 1 stated that "Today on 23rd November, 1998" beneath the L.T.I. she put date was given as 23rd November, 1998, whereas from the endorsement made on the written information by the Officer-in-charge of Egra Police Station, it appears that police received the information at about 16.30 hours of 15th December, 1998. But no explanation is found to have been given by the prosecution to address this riddle.

13. The victim as P.W. 2 categorically stated that he was assaulted by the accused persons on 23rd November, 1998. There was heavy shower.

He went to the arable land to remove extra water in order to prevent the crops from being damaged. He was assaulted by Rashid Khan who landed blow of bhali and got his hand fractured. P.W. 2, further stated that Lal Khan landed a blow of lathi on his head and Giasuddin assaulted him with a knife as a result he sustained cut injury. He was shifted to Egra hospital for treatment. He remains admitted into hospital for 14-15 days. Thereafter, he was shifted to Conotai hospital. During cross-examination he stated that he did not take permission from Rashid Khan before cutting the Aal to drain out water; rather he cut Aal turning a deaf ear to the protest of Rashid Khan. He went to the hospital at about 3.00 p.m. and he was interrogated by the police on 24th November, 1998. He stated further that civil dispute is going on between the parties. He stated during cross-examination that he sustained a violent blow on his head with lathi. Doctor stitches the wound. Rashid Khan first assaulted him with bhali, thereafter, he was beaten up with stick.

14. The victim is getting support from the testimony of P.W. 10, the attending doctor, who examined the victim and found cut injury over the scalp measuring about 1" x ½" x ½", lacerated injury on the left ear measuring about 3" in length, abrasion over left shoulder, two small stab injuries on the right arm and right forearm, tenderness on the right thigh over the knee. The victim sustained fracture on his right radius and dislocation of left fifth metacarpal. The injury report was admitted into evidence as Exhibit-3. During cross-examination he stated that X-ray done on 24th November, 1998. The injury report reveals that he was examined on 23rd November, 1998 and not on 24th November, 1998. From the X-ray report the name of the patient appears to be Sk. Samsul.

He opined that fracture may occur due to fall. Lacerated injury can be caused by the blunt weapon. He found cut injury on the scalp of the patient and lacerated injury on the left ear. He did not mention the type of abrasion he found on the person of the victim.

15. True it is in X-ray report there is a reference of Sk. Samsul in the written information as well as the de-facto complainant has been depicted as wife of Sk. Samsul. In the FIR Taimuna Bibi, the de-facto complainant has been described as wife of Sk. Samsul while during cross-examination as prosecution witness the victim introduced himself as Sk. Samsuddin. P.W. 1, Taimuna Bibi introduced herself as wife of Sk. Samsuddin. P.W. 7, Nasim also claimed to be to son of Sk. Samsuddin here. Therefore, there is every reason to presume that Samsul and Samsuddin is identical person. But such statement ought to have been made by the prosecution witnesses. P.W. 2, the victim sustained injuries. He is getting support from injury report Exhibit-3 and the testimony of attending doctor P.W. 10, but learned Trial Court instead of giving importance to the testimony of injured witness got swayed by extraneous circumstances caused by the testimony of witness who did not have direct knowledge about the alleged incident.

16. The impugned judgement, in my view, should not be allowed to remain in force and should be set aside. While doing so, I am of the view that this is a fit case to invoke the provision of Section 386 of the Code of Criminal Procedure and to send it back on remand with a direction upon the learned Trial Court to give an opportunity to the prosecution to adduce evidence to explain the apparent discrepancies appearing from the name Samsul and Samsuddin by which the injured was introduced

before the Court and to explain the circumstances as to why the case was registered on 15th December, 1998, though the written information contains the averment that it was written on 23rd November, 1998. I would like to add further that the written information that led to registration of Egra Police Station case no. 129 of 1998 forms a part of the FIR. In column no. 10, it is written that original written complaint is treated as FIR “and attached herewith”. The First Information Report, being a public document when embraces the written information as part of the said document, learned Trial Court ought to have admitted the content of the said document instead of marking the L.T.I. as exhibit. Learned Trial Court is directed to give an opportunity to the prosecution to adduce evidence to explain the aforesaid points as indicated hereinabove. Liberty may also be given to the accused persons to adduce evidence if they wish to. Thereafter, learned Trial Court shall dispose of the case by writing a judgement afresh. Consequently, the appeal is allowed and impugned judgement is set aside.

17. Let a copy of the judgement be sent down together with lower Court record with a direction to dispose of the same as expeditiously as possible.
18. 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.)