

**Form No.J(1)**

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

Present:

**The Hon'ble Justice Tirthankar Ghosh**

**C.R.A. (SB) 177 of 2022**

***Joyshree Kora & another*  
versus  
The State of West Bengal**

For the Appellants : Mr. Siddhartha Ruj.

For the State : Md. Anwar Hossain  
Mrs. Debjani Sahu.

**Heard On : 29.03.2023, 11.04.2023 & 18.04.2023.**

**Judgement On : 18.04.2023.**

**Tirthankar Ghosh, J. :**

The present appeal has been preferred against the judgement and order dated 28.09.2022 and 29.09.2022 passed by the learned Additional Sessions Judge, 4<sup>th</sup> Court, Suri, Birbhum in Sessions Trial No. 01(9) of 2018 arising out of Sessions Case No. 85 of 2018 wherein the learned trial court was pleased to hold the appellants namely Joyshree Kora and Raju Kora along with others guilty of the offences

under Sections 341/307 IPC read with Section 34 of the Indian Penal Code.

The learned trial court as such was pleased to impose the following sentence :-

1. *for the offence under Section 341 IPC, the learned trial court was pleased to impose sentence of simple imprisonment for one month.*
2. *for the offence under Section 307 IPC read with Section 34 IPC, rigorous imprisonment for five years and fine of Rs.5000/-, in default to suffer rigorous imprisonment for another one month.*

The genesis of the present case related to Panrui P.S. Case No. 43 of 2017 dated 26.05.2017 which was initiated on a letter of complaint addressed by Hriday Dalui with the Officer-in-Charge, Panrui PS to the effect that he is a resident of Abhinaspur Gram Panchayat within the jurisdiction of said police station, that on 25.05.2017 at about 6.30 p.m. in the evening when his niece accompanied by two, three other women were returning exhausted after working from a brick kiln, Sathi Kora, Rajyashree Kora, Joyshree Kora and Raju Kora set her on fire which was preplanned. The accused persons sprinkled kerosene oil on her and set her on fire which resulted in severe burn injury. The victim was taken to Sultanpur BPHC and later admitted at Suri Sadar Hospital. She has been fighting for her life. The complainant as such prayed for taking

necessary steps so that exemplary punishment can be imposed upon the accused persons.

On the basis of such complaint, investigation commenced and subsequently on conclusion of investigation, chargesheet was submitted before the jurisdictional court under Sections 341/326/307 read with Section 34 IPC. On or about 02.08.2018, the case was committed to the court of Sessions and thereafter the same was transferred by the learned Sessions Judge, Birbhum to the learned trial court being the learned Additional Sessions Judge, 4<sup>th</sup> Court, Suri, Birbhum. The learned trial court after hearing the prosecution and the accused persons framed charges against one of the accused namely Sathi Kora and the present appellants under Sections 341,326,307 & Section 34 of the Indian Penal Code. The contents of the charge were read over to them to which they pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon eight(8) eight witnesses being PW-1 Hriday Dalui; PW-2, Susuni Dalui @ Sishumoni Dolui; PW-3, Nimta Dalui; PW-4, Tumpa Dalui; PW-5, Manab Dalui; PW-6, Nemai Dalui; PW-7, Dr. Soumendra Datta and PW-8, S. I Pradip Ghosh(Investigating Officer).

The prosecution also in order to prove its case relied upon six documents which included the written complaint, seizure list dated

26.05.2017, the bed head ticket, the formal FIR, the rough sketch map with index and the carbon copy of label.

PW 1 Hriday Dalui in his evidence deposed that the injured happen to be his cousin sister and is a resident of the village. She was married at Bakreswar but was deserted by her husband and as such she started living in the same village. The injured is having two children with whom she is residing at her mother's house and was working in the brick field. He stated that about a year ago in the evening when the injured was returning after her work, on her way in their village Konrapara near the house of accused persons she was attacked. The four accused persons poured kerosene oil upon the injured Sishumoni and set her on fire. By the time, the witness went to the spot, injured was removed to Abinashpur Hospital. He deposed that he reported the incident to the Panrui police station in writing and one Rakesh wrote the complaint as per his dictation and direction which was read over and explained to him. He identified his signature on the seizure list, which was marked as Exhibit-1. Some articles were seized on the spot by the police authorities and the seizure list was prepared in respect of such seizure. He identified his signature on the seizure list, which was marked as Exhibit-2.

PW-2 Susuni Dalui @ Sishumoni Dolui is the injured victim. She deposed that she was residing at her father's house and the incident happened one and half years ago at 6 p.m. when she was returning from brick field named Sonar Bhata after her daily job. She was accompanied with Nimta Dalui and Tumpa Dalui. The accused persons namely, Jayashree Konra, Raju Kora, Rajashree Kora and Sathi Kora were standing with kerosene oil in order to kill her. She was confined and all the accused persons initially tried to assault her, when the members accompanying her tried to rescue her then Raju Konra chased them with a bamboo stick. Jayashree and Rajashree held her hand and their mother Sathi poured kerosene oil on her person and by way of a burning match stick she set fire over her. One Santi Sk. dashed her in a nearby pond where she was lying. People assembled there, her companions namely Tumpa and Nimta took her out of the pond. The accused Raju again used filthy language and tried to assault Nimta and Tumpa when the villagers tried to nab him when the accused fled away. At that time Dalim Sk. of their village arrived and he took her to hospital in his motor cycle accompanied by Nimta Dalui. She was thereafter shifted to Suri Hospital and finally referred to Burdwan Hospital. The witness deposed that she was assaulted as the accused persons suspected that she was having an illicit relationship with the husband of Sathi Kora i.e., Ratan

Kora. She deposed that she sustained burn injury in the left side of her person, mostly in the left hand and back. She identified the accused persons namely, Raju Kora, Jayashree Kora and Sathi Kora in court.

PW-3 is Nimta Dalui. She deposed that she was working in a brick field and on the date of the incident she had gone to work and after couple of days she came to know that Susuni Dalui received burn injuries. She heard about the incident and did not know how the injured sustained burn injuries. The witness was declared hostile by the prosecution.

PW-4 is Tumpa Dalui. She also deposed that she knew the accused persons and also their residence. She worked at a brick field and is not aware as to whether the PW-2, Susuni Dalui used to work there. She was also declared hostile by the prosecution.

PW-5 is Manab Dalui who is a resident of Bholaipur. He identified his signature in the seizure list dated 26-05-2017 which was marked as Exhibit 2/1.

PW-6 is Nemai Dalui who is a resident of Bholaipur. He deposed that a lady namely Sishumoni of their village received burn injury as somebody sprinkled kerosene oil on her person. He visited the hospital where she was admitted and at that time his left thumb impression was taken on the seizure list at the instance of the police.

PW-7 is Dr. Soumendra Datta who was posted in the emergency of Suri Sadar Hospital and attended the patient Susuni Dalui. The witness gave narration regarding the history and the injury of the patient which is set out as follows :

*“The patient gave history in presence of senior Staff Nurse Swagata Mondal of homicidal burn by throwing kerosene oil all over her body by wife and daughters namely Sathi Konra, Jayashree Konra, Rajashree Konra and Raju Konra son of Ratan Konra out of suspicion of illicit relationship between Ratan Konra and Susuni Dalui. The incident took place around 6-00 p.m. at Bholapur on the street. The material used was kerosene oil and lighter. The victim was rescued by Sk. Santi. The patient put her LTI on the bed head ticket which was treated as her dying declaration. This is her LTI. This is the signature of the said Staff Nurse Swagata Mondal and her handwriting and signature is known to me as we were working together.*

*On examination the patient had incurred 57% burn. The patient was initially at presentation was stable and treatment was started. However, on the next day the patient’s condition was deteriorated and the patient was referred to Burdwan Medical College & Hospital.”*

The doctor was shown the bed head tickets containing 3 pages which were signed by him, he identified his signature and the same were marked as Exhibit-3 collectively.

PW-8, SI Pradip Ghosh is the Investigating Officer of the case. He described the chronology in which he examined the witnesses, prepared the rough sketch map along with index, seized the available materials by

way of seizure list and collected the medical report and on conclusion of investigation, submitted charge-sheet before the jurisdictional court.

Mr. Siddhartha Ruj, learned advocate appearing for the appellants submitted that the appellants are innocent of the charges and they have been falsely implicated in connection with the instant case. Learned advocate drew the attention of the Court to the charges which have been framed and submitted that in this case unnecessarily the term dying declaration has been used by the prosecution, although the victim survives. Learned advocate drew the attention of the Court also to the evidence of PW-2 and submitted that in the examination-in-chief of PW-2, it has been clearly stated that she was being accompanied by Nimta Dalui and Tumpa Dalui. The said Nimta Dalui and Tumpa Dalui were examined as PW-3 and PW-4 respectively and both of them denied having accompanied the victim PW-2 viz. Susuni Dalui. It has also been emphasised that none of the witnesses except PW-2 supported the prosecution case and the learned trial court erroneously arrived at a finding of conviction so far as the present appellants are concerned.

Mr. Anwar Hossain, learned advocate appearing for the State opposed such contention and submitted that the document relied upon by the prosecution itself goes to show the complicity of the present appellants and the manner in which they intended to inflict harm upon

the victim. It has been submitted by the State that already leniency has been extended to the accused persons and as such, no further interference be made in respect of the judgement and order of conviction and sentence so passed by the learned trial court.

I have considered the submissions advanced by the learned advocates appearing for the appellants as also for the State. The bed head tickets, which were relied upon by the prosecution i.e. Exhibit-3 collectively, reflect the history which has been narrated and was in close proximity of time in respect of the incident which happened. The names of each of the accused persons were appearing in the medical documents and the same being corroborated by PW-2 in court vividly do make out a case. The evidentiary value of an injured witness cannot be thrown away until and unless overwhelming materials are produced by the defence either by way of palpable mistakes in the prosecution case or by adducing any other evidence. In this case, the evidence of the injured victim could not be thrown away in view of the evidence of PW-2, the injured herself as well as the evidence of PW-7 Dr. Soumendra Datta.

Considering the nature of the materials appearing against the present appellants so far as their complicity and their role as described by the PW-2 that the appellant no.2 Raju Kora was assaulting her associates with the bamboo stick and at that time, Joyshree Kora

(appellant no.1) and another accused Rajashree Kora were holding her hands when Sathi Kora by sprinkling kerosene, set her on fire, do make out a case holding the appellants guilty of the offence. Accordingly, the order of conviction so passed by the learned trial court is hereby affirmed.

However, having regard to the background and the foundational facts of the present case particularly, the rustic nature of the accused persons, which is reflected from the evidence that they were either workers or are relations of labours working in brick-field and another fact that the father of the appellants were having illicit relationship with the injured, which is substantiated in cross-examination, I am of the view that the sentence so imposed is required to be interfered with. Accordingly, so far as the sentence imposed under Section 341 of the Indian Penal Code is concerned, the same is retained.

The sentence so imposed under Section 307 of the Indian Penal Code is reduced to 18 (eighteen) months. Further, an additional condition is imposed under Section 106 of the Code of Criminal Procedure that the appellants shall furnish good behaviour bond of Rs.5,000/- (Rupees Five Thousand) each before the learned Chief Judicial Magistrate, Suri for a period of three years from the date of their

release after serving out the aforesaid sentence. Such bond must be furnished by them prior to their release after serving out the sentence.

The appellants are on bail. Their bail bonds stand cancelled. They are directed to surrender within a week from date.

Learned advocate for the appellants submits that the appellants have served or were detained in course of investigation and during the pendency of the appeal. The said period be set off from the aforesaid period of 18 (eighteen) months sentence so imposed.

The criminal appeal being CRA (SB) 177 of 2022 is, thus, partly allowed.

Pending connected application, if any, is consequently disposed of.

Department is directed to send back the lower court records along with a copy of this judgement immediately to the learned trial court.

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

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

**(Tirthankar Ghosh, J.)**