

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 739 of 2016

Sk. Sadek Ali @ Kalo

Vs

The State of West Bengal

For the Appellant : Mr. Sanjay Chakraborti.

For the State : Mr. Arijit Ganguly,
Mr. Koushik Kundu.

Hearing Concluded on : 08.09.2023

Judgment on : 04.10.2023

Shampa Dutt (Paul), J.:

1. THE APPEAL:-

The present appeal has been preferred against the judgment dated 07.11.2016 passed by the Learned Additional District and Sessions Judge, Fast Track Court – 1, Howrah in connection with S.T. No. 236 of 2014 convicting appellant under Sections 307/326/34 of Indian Penal Code and Order on 08.11.2016 sentencing him to suffer rigorous imprisonment for five years and pay fine of Rs. 5,000/- in default to suffer rigorous imprisonment for 6 months for the offence under Section 326 of Indian Punishable/Penal Code and also to suffer rigorous imprisonment for 5 years and pay fine of Rs. 10,000/-, in default to suffer rigorous imprisonment for 1 year for the offence punishable under Sections 307/34 of Indian Penal Code, all the sentences being directed to run concurrently.

2. DEFENCE CASE:-

Defence case is that in the facts and circumstances of the case, the evidence and other materials on record, the conviction and sentence passed by Learned Trial Court against appellant are unsustainable in law.

It is submitted that the appellant has been convicted without any legal basis and just on the basis of some surmise and conjecture and that the Learned Trial Court wrongly relied on the uncorroborated testimony of PW/2.

And there was clear omission of important facts in F.I.R.

It is further stated that it was alleged by PW/2 (victim) that he was assaulted with an iron rod, bhojali and sabol. Bhojali and sabol were not produced in Court. Iron rod produced before Court had no label and seal on it, furthermore iron rod was seized on 30.07.2013 while incident as alleged took place on 11.07.2013. PW/8, Investigating Officer stated in his cross examination that houses are adjacent to the place of occurrence, but he did not call any of the neighbours to be witness to seizure list. The seizure list witnesses are police personnel.

That there is inordinate delay in recording statement of PW/2. Incident took place on 11.07.2013. PW/2 was admitted in the nursing home on that day at about 11a.m. and he was admitted there for 4 days and released on 15.07.2013, but the I.O. examined and took his statement on 27.08.2013 at home.

Furthermore, the natural conduct of an injured is to disclose the names of the assailants in the history of assault, before the doctor, when taken to a hospital for treatment.

PW/7, the doctor of the nursing home who attended PW/2 stated in his evidence-in-chief,

“The patient told that the people of the local area after arguments that the patient with iron rod”.

In his cross examination PW/7 stated -“the patient did not tell me who assaulted him”. Even this aspect has not been considered by Learned

Trial Court. It is stated in examination-in-chief of PW/7 that PW/2 was brought to the nursing home by Habib Khan at 11 a.m. But Habib Khan was not tendered as a witness by the prosecution, for reasons best known to them.

It is further stated that the Learned Trial Court did not evaluate and appreciate the evidence of the independent witnesses in the right perspective nor did it undertake any searching analysis to consider the qualitative worth of their testimony. PW/3, PW/4, PW/5, PW/6 are independent hearsay witnesses. All of them stated in unison that they do not know about the incident as the same did not occur in front of them.

3. PROSECUTION CASE:-

Prosecution case is that one Md. Salim Mallick lodged a complaint with I/C, Najirganj Police Station stating that on 10.07.2013 at 10 a.m. his nephew Sk. Nooruddin went to the grocery shop of Sunil Shaw. At that time one Sk. Sadek Ali @ Kalo and Sk. Rajesh started quarreling with his nephew and suddenly attacked him with bhojali, sabol and iron rod and assaulted him on his head with iron rod and chopped on his chest with a Bhojali and also assaulted him on his left leg with iron rod and broke the leg. His nephew in bleeding condition fell on the ground. The public rescued him and took him to Indus Nursing Home.

4. EVIDENCE:-

The prosecution examined 8 witnesses.

- i) Exhibit 1 is the Written Complaint
- ii) Exhibit 2 is the Treatment Sheet
- iii) Exhibit 3 is the Rough Sketch Map with index
- iv) Exhibit 4 is the Seizure List.

Material Exhibit 1 is an iron rod.

PW1 is the Uncle of the victim and the complainant in this case but not an eyewitness.

P.W.4, 5, 6 are witnesses who heard about the incident.

P.W. 3 is the owner of the shop, where the parties first had an altercation, when P.W. 3 settled the matter. He later heard about the incident.

P.W.2 is the injured Victim, the best witness in this case. He deposed as follows:-

“On 11.07.2013 at 10 a.m. on the first day of Roja. I went to the grocery shop of Sunil Shaw near PMSB Club at Podra Chunabhati Mallick Para to buy some goods. I told the shop keeper to give the goods immediately, then Sadek Ali raise objection regarding this a debate took place with him and me. He went away to his house near the shop room. I was going to my house through the field. Then Sadek came with a rod behind me and assaulted on my head with the rod. I fall down on the ground. Then he and his son Rajesh started assaulting me with iron rod and sabal. They broke my left leg. Sadek Ali assaulted me with a bhojali on my chest and I received bleeding injury. I received a crack on my right hand at the wrist. I shouted. The neighbours came there. They took me with a van to Indus Nursing Home. I admitted there for 4 days. I release on 15.07.2013. I told the fact to my Mama Selim Mallick who came to me at hospital. He lodged a FIR at Sankrail P.S.

Sadek is present in Court (identified).

It is not possible for me to identify this iron rod.”

P.W. 7 is the Doctor, who examined and admitted the victim.

On examination he found the following injuries and deposed as follows:-

“On 11.07.2013, I was posted at Indus Nursing Home. On that day, I examined one patient Sk. Nuruddin who was admitted under me. He resides at Podra, Chunabhati, Sankrail, Howrah. He was brought by Habib Khan at 11 a.m. He had head injury on the top of the head, it was a cut injury measuring 4.5 inches by half inches. He had other lacerated injuries on both legs and two fractures on left leg and right forearm and he had abrasions on chest. The patient told that the people of the local area after arguments beat the patient with iron rod. I treated him referred to orthopedic surgeon Dr. Abhijit Bandhopadhyay. I also treated that.

I have signed in this report. These are my signatures. I know the signature of Dr. Abhijit Bandhopadhyay. These are his signatures.

These are the treatment sheet attested by the administrative Manager of Indus Nursing Home. Marked as Exbt. 2.”

The Appellant and his son were the Accuseds in the present case. The Son, Sk. Rajesh being a Juvenile in Conflict with law was tried and acquitted by the juvenile Justice Board, Howrah on 02.09.2014.

5. ANALYSIS OF EVIDENCE:-

Though the case of the appellant is that the victim has not named him before the Doctor, it is seen that he has been **named in the FIR, (written complaint).**

The victim, P.W. 2 has clearly stated that the appellant attacked him with dangerous weapons and caused grievous injuries, which has duly proved by way of oral and documentary evidence beyond all reasonable doubt against the appellant. The acquittal of the son of the appellant by the Juvenile Justice Board is not relevant.

6. CONCLUSION:-

The judgment dated 07.11.2016 passed by the Learned Additional District and Sessions Judge, Fast Track Court – 1, Howrah in connection with S.T. No. 236 of 2014 convicting appellant under Sections 307/326/34 of Indian Penal Code and Order on 08.11.2016 sentencing him to suffer rigorous imprisonment for five years and pay fine of Rs. 5,000/- in default to suffer rigorous imprisonment for 6 months for the offence under Section 326 of Indian Punishable/Penal Code and also to suffer rigorous imprisonment for 5 years and pay fine of Rs. 10,000/-, in default to suffer rigorous imprisonment for 1 year for the offence punishable under Sections 307/34 of Indian Penal Code, all the sentences being directed to run concurrently **being in accordance with law thus requires no interference by this Court and is affirmed.**

The Appeal being CRA 739 of 2016 is dismissed.

The appellant **Sk. Sadek Ali @ Kalo** is directed to surrender before the Trial Court within 15 days from the date of this order to serve out his sentence in default, Trial Court to proceed in accordance with law.

Copy of this judgment be sent to the learned Trial Court for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)