

23.02.2023

Court No.35
Item No. 21

D.Hira

CRA 755 of 2012

**Haider Ali
Vs.
The State of West Bengal**

Mr. Narayan Prasad Agarwala,
Mr. Pratick Bose.

... for the State

This is an appeal against acquittal, which has been preferred by the complainant Haider Ali in Complaint Case No. 474C/2006, filed in the Court of Chief Judicial Magistrate at Howrah on 11th May, 2006.

The complainant filed the said complaint case against four accused persons, namely Abdul Gaffar, Sk. Sahajada, Sk. Raju and Sk. Mahamood Alam. He says that accused no. 1 that is Abdul Gaffar has been his tenant and other accused persons are the brothers of accused no. 1. The complainant and the accused person Abdul Gaffar were parties to an ejectment suit. The date of incident is said to be 1st May, 2006 at about 10:30 p.m. in the night.

Allegedly the said person Abdul Gaffar staged up some goods in the passage of the complainant/appellant, blocking the ingress and egress of his house. Being protested, Abdul Gaffar subjected the complainant/appellant and another person Sire Banu with filthy languages and threatening. The matter did not end there and was aggravated as the said accused person in a drunken condition and being enraged assaulted the appellant and two other persons resulting into sufferance of injuries by all of them. The general diary was lodged by the appellant in Howrah police station and all of them were treated in Howrah District Hospital.

Allegedly since after lodging the general diary, the police has not taken any steps towards the offence committed by the said accused persons, the appellant filed the complaint in the Court as mentioned

above.

In accordance with the provisions of the statute, the Court proceeded and trial was conducted, which ultimately has culminated into the judgment dated 30th May, 2011 by the Judicial Magistrate (Municipal Court), Howrah in T.R. no. 06/2010.

The Trial Court by a detailed and well-discussed judgment has come to the findings that the accused persons in the case are not found guilty under the provisions of Section 323 of the Indian Penal Code, by which they were charged and acquitted them.

The said judgment is under challenge in this appeal.

Since no one appeared for the appellant, this Court appointed learned Amicus Curiae. The State is also represented.

In the Trial Court the prosecution has examined seven witnesses in this case.

However, vital witnesses like the person named to be the co-injured along with the appellant has not been examined in this case. The persons whom the complainant/appellant has mentioned to be present at the time of scuffling etc., are also not examined.

Therefore, in support of the prosecution case only the evidence of the appellant/complainant remained there and credibility and waitage of his evidence is to be judged in the light of the evidence of other witnesses and the surroundings facts and circumstances. Since this is an allegation of scuffling in a group of people, in absence of evidence of the persons said to be present at the place of occurrence would be fatal to the prosecution case. Nevertheless, the appellant/complainant has supported the prosecution case. In his evidence he has stated as follows:-

“My name is Hider Ali

My father’s name is Late Abdul Guffar I am by religion Muslim My home is at Mauza Howrah, 28/2, Roshon Goldar Lane.

Police Station Howrah District Howrah

I reside at Present in Mouza Howrah Police Station Howrah District Howrah where I am

I have filed this case against Abdul Jabbar, Sk. Mehemoood, Sk. Raju & KS. Sahajada. All of them are present in Court room (identified).

The incident took place on 01/5/06 at 10.30 P.m. at 28/2 Rashon Goldar Lane.

Abdul Jabbar was unloading his goods from his cycle by keeping it on passage. At that time Sire Banu told him to give her access. At that time Abdul Jabbar in drunken condition told her to wait till his unloading. Then Sire Banu told him that why should she wait. Then Abdul Jabbar abused her with filthy languages. Then Irfan and Sonu came down and asked Abdul Jabbar that why he has abused Saire Banu. Then Abdul Jabbar started to assault Irfan & Sonu. Then Sk. Mehemmod, Sk. Raju and Sk. Sahajada the brothers of Abdul Jabbar came to the spot and started to abuse with filthy languages and assaulted Sonu. Then I came to the spot and asked the accused that why they are doing to. The accused persons then started to assault me, Sonu, Irfan, Saire Banu and other persons rescued me. I lodged complaint before Howrah P.S. But the police has not taken any steps.

(Deferred on the prayer of complainant)

Sd/- illegible.

06/06/09

Examination in Chief is resumed today i.e. on 15/3/10.

The incident was witnessed by Sahar Bano, Sonu, Irfan and Jainul.

I was admitted to Howrah Hospital from the P.S. Sonu was treated thereat alongwith me.

These are the two injury reports (?) one belonging to me and other pertaining to Md. Sonu.

The injury reports marked as 'X' and 'Y' for identification respectively.

The case was filed when police did not take any suitable action.

The complaint (3 Pages) was drafted as Per my instruction by my lawyer and then I had put my signature thereon after going through its contents and understanding its true purpose (sic).

Today I have deposed in its connection."

The other person namely Sire Banu said to have been present in the place of occurrence has deposed as follows in the Court:

"My name is Sire Banu

My husband's name is Lt. Sk. Kuroan I am by religion Muslim My Home is at Mauza Police Station District

I reside at present in Mouza 28/2 Raushan Gulzar Lane Police Station – Howrah District Howrah where I am

I knew Haider Ali. Today I have come to depose on C/W a case filed by Haider Ali.

Haider Ali has filed this case against Abdul Jabbar, Mahmud Alam, Sk. Raju and another. Then says Sk. Shahajada.

The accused persons are present in Court today (identified).

The incident took place on 1/5/06 at about 10: 30 PM at my place, right infront

of my house's gate.

On that date Abdul Jabbar was unloading certain goods from his cycle. Haider Ali wanted to pass by. He asked for passage but he was denied the same.

Then Abdul Jabbar started abusing him and beating him i.e. Haider Ali. Abdul Jabbar was joined in the act by his brothers namely Sk. Raju, Mahmud Alam and Sk. Shahajada.

They beat Haider Ali by fists and blows.

The incident was witnessed by myself. Sonu, Md. Irfan and Jainul.

Haider Ali was hurt. He went to police station and then was sent to Howrah Hospital. Haider Ali was treated there.

Police did not come to our place."

The evidence of the Doctor (PW 7) may also be noted in this case. The Doctor has deposed as follows:

"The patient had stated that he was assaulted by Abdul Jaffar and others at 10:30 PM on 1/5/06 at residence of Haider Ali. On examination I had found on abrasion on left forearm at elbow joint and abrasion on right side of chest more close to neck. He was attended and discharged and was advised to attend OPD next date. Nature of injury was fist and blow. I did not note age of injury."

Accordingly, in consideration of the evidence of the witnesses as discussed above who are the injured/eye-witness of the alleged incident, it appears that though the allegations of assault has been made against the accused persons, the medical findings as deposed by the Doctor would not support the prosecution case.

To satisfy the ingredients of the offence as alleged against the appellant, the prosecution shall have to prove beyond all reasonable doubt the following pursuant to the provision under Section 321 of the Indian Penal Code.

"321. Voluntarily causing hurt. —Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

Causing hurt and the same with the intention to do so are the requirement, prosecution had to prove in this case, in trial, beyond all reasonable doubts, to bring home the charges against the accused persons under Section 323 of the Indian Penal Code. In this regard, doctor's deposition and findings are fatal to the prosecution case.

Abrasions are detected and also no statement is available of the doctor as to what would be the probable reason for causing the same.

As discussed earlier, on the basis of the evidence neither of these ingredients are proved in this case. To that extent, the judgment and the Trial Court is found just and proper, and would not require any interference by this Appeal Court.

Hence, the appeal fails. CRA 755 of 2012 is dismissed.

All pending applications, if any, are consequently disposed of.

Certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)