

**IN THE HIGH COURT AT CALCUTTA  
CIRCUIT BENCH AT JALPAIGURI  
CRIMINAL APPELLATE JURISDICTION**

Present:

**The Hon'ble Justice Joymalya Bagchi**

And

**The Hon'ble Justice Apurba Sinha Ray**

**C.R.A. 10 of 2019**

***Jhari Oraon***

**-Vs-**

***State of West Bengal***

|                            |                                                                       |
|----------------------------|-----------------------------------------------------------------------|
| <b>For the Appellant :</b> | Mr. Aniruddha Biswas, Adv.                                            |
| <b>For the State :</b>     | Mr. Aditi Shankar Chakraborty, Id. A.P.P.<br>Mr. Sourav Ganguly, Adv. |
| <b>Heard on :</b>          | 05.12.2023                                                            |
| <b>Judgment on :</b>       | 05.12.2023                                                            |

**Joymalya Bagchi, J. :-**

1. Nobody appears for the appellant. Mr. Aniruddha Biswas, learned Advocate empanelled with High Court Legal Services Authority is requested to represent the appellant. Member Secretary of the High Court Legal Services Authority shall regularise his appointment.

2. Appellant has assailed judgment and order dated 31.05.2019 and 01.06.2019 passed by learned Additional Sessions Judge, Fast Track Court-II, Jalpaiguri (presently Alipurduar district) in Sessions Trial No. 22 of 2015 arising out of Sessions Case No. 197 of 2014 convicting the

appellant for commission of offence punishable under Sections 326/307 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5,000/-, in default, to suffer simple imprisonment for a period of three months for the offence punishable under Section 326 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5,000/-, in default, to suffer simple imprisonment for three months for the offence punishable under Section 307 of the Indian Penal Code, both the sentences shall run concurrently.

3. Prosecution case levelled against the appellant is as follows:-

On 08.06.2014 at 3.00 PM when Dipak Oraon, PW 2 had gone to the road in front of his house to fasten his cow, an altercation broke out between him and the appellant. The appellant went back to his house, brought a sharp dagger (Kukri) and attacked Dipak causing injuries on his back, left ear and back of head. Dipak was admitted to Alipurduar S. D. Hospital where he was treated for seven days. Written complaint was lodged by the wife of Dipak Oraon (PW 1) resulting in registration of Alipurduar P.S. Case No.193 of 2014 dated 14.06.2014 under Sections 341/326/307/506 of the Indian Penal Code.

4. In course of investigation, weapon of offence i.e. Kukri was recovered from the residence of the appellant.

5. In conclusion of investigation, charge sheet was filed and charges were framed under Sections 341/326/307/506 of the Indian Penal Code.

6. Appellant pleaded not guilty and claimed to be tried.

7. In the course of trial, prosecution examined twelve (12) witnesses and exhibited a number of documents including weapon of offence. Defence of the appellant was one of innocence and false implication.

8. In conclusion of trial, trial Judge by the impugned judgment and order dated 31.05.2019 and 01.06.2019 convicted and sentenced the appellant, as aforesaid.

9. PW 2, Dipak Oraon is the injured witness. He deposed on 08.06.2014 at 3.00 PM he was grazing cattle on the road when the appellant came to the spot an altercation broke out. Thereafter, Dipak went to the shop of Sima Bhagat. Appellant came to the shop and assaulted him with a sharp cutting weapon (bhojali) on his shoulder and left ear lobe. He raised alarm. Sushil Oraon took the bhojali from the appellant. Appellant chased Sushil. PW 2 was taken to Alipurduar S. D. Hospital where he was admitted for seven days. His wife lodged complaint at the police station. Police arrested the appellant. From his residence weapon of offence i.e. Kukri was recovered. PW 2 remained unshaken during cross-examination.

10. PW 2 is corroborated by his wife Lalita Oraon, PW 1. She is the de-facto complainant. She proved the written complaint which was scribed by PW 12. In course of cross-examination, she stated after being released from hospital, her husband used to stay at home due to weakness.

11. PW 3, Sima Bhagat is the owner of the shop where the incident is said to have taken place. She, however, could not throw any light with regard to the incident.

12. PW 5, Swapna Rabha is the daughter of the victim Dipak. She is a post occurrence witness. She deposed after his father returned home, appellant used to hold out threats that he would commit similar offence.

13. PW 6, Litu Oraon is the father of the victim, Dipak. He is also a reported witness.

14. PW 11, Dr. Soumen Chakraborty is the medical officer who treated Dipak. He stated on 08.06.2014 he was posted at Alipurduar S. D. Hospital. Dipak was brought to the hospital with history of lacerated injury over upper back, left ear and back of head. He advised medicine and injection. He proved the injury report, Ext.4. Victim was admitted in hospital at 4.05 PM at male surgical ward. Another injury report was also proved, Ext.5. During cross-examination, PW 11 stated he noted 'no' to the query whether the injuries were sufficient to cause death. Name of the assailant was not mentioned in the history of assault.

15. PW 10, Sachindra Nath Basunia is the Investigating Officer. He proved the formal FIR. During investigation he visited place of occurrence, drew rough sketch map and recorded statements of witness. He collected injury report. He seized weapon of offence i.e. Khupri from the house of the appellant. He prepared seizure list, Ext.2/2. He submitted charge sheet.

16. PW 8, Ritesh Barman is a witness to the said seizure.

17. Analysis of the evidence on record shows PW 2 had a quarrel with the appellant while the former was grazing his cow on the road. Thereafter, PW 2 went to the shop of Sima Bhagat (PW 3). At that time

appellant came to the spot with a Khupri and assaulted him. He suffered injuries on his back, ear lobe and back of head. He was shifted to Alipurduar S. D. Hospital.

18. Mr. Biswas submits Sima Bhagat (PW 3), owner of the shop stated she was not aware of the facts of the case. Lack of corroborations from her improbabilises the genesis of the prosecution case.

19. PW 3 is the owner of the shop but she was not present at the place of occurrence. Hence, her failure to support the prosecution case would not cast aspersion on the creditability of the injured witness particularly when his deposition is corroborated by his wife Lalita Oraon (PW 1) and daughter Swapna Rabha (PW 5) who came to the spot immediately after the incident and removed him to hospital.

20. PW 2's deposition with regard to the manner of assault is also corroborated by medical evidence. PW 11 is medical officer who noted injuries on his back left ear and back of head caused by sharp cutting weapon.

21. Hence, I am of the opinion evidence of the injured witness i.e. PW 2 is supported by other evidence on record including medical evidence. Genesis of the incident and involvement of the appellant in the assault on PW 2 is proved beyond doubt.

22. In this backdrop, let me examine whether the ingredients of the offences under Sections 326/307 of the Indian Penal Code are proved.

23. PW 10, medical officer has proved two injury reports viz., Exts.4 and 5. Injuries are described in both the injury reports are superficial and

do not have depth. Medical officer was unable to opine whether the injuries were grievous or not. Victim was in hospital for six/seven days.

24. Under such circumstances, I am constrained to hold prosecution has failed to prove the injuries on PW 2 fall within any of the clauses of Section 320 of the Indian Penal Code defining 'grievous hurt'. However, it is undeniable that appellant was the author of the injuries and had used a sharp cutting weapon. Instead of Section 326 of the Indian Penal Code, ingredients of Section 324 of the Indian Penal Code are proved against him.

25. Coming to the charge under Section 307 of the Indian Penal Code, Mr. Ganguly argued that the injuries have been described as 'homicidal' in Ext.4. The word 'homicidal' is noted against the column "causation of injury'. It is used in contradistinction to the words "suicidal or accidental". Read in this context, the use of the expression 'homicidal' does not mean that the injuries either endangered life or would have caused death. It merely denotes the injuries were inflicted by a hostile hand i.e. a third party and were neither self-inflicted nor accidental.

26. I am further persuaded to come to such a conclusion as the medical officer during cross-examination admitted that he had commented in the negative to the query whether the injuries were sufficient to cause death. Moreover, it is relevant to note there is no evidence that the appellant had exhorted to kill the victim at the time of assault. Allegation that the appellant had subsequently threatened to

commit similar offence as stated by the daughter of the victim (PW 5) is not corroborated either by the victim or his wife.

27. In this backdrop, I am of the opinion neither the injuries nor the attending circumstances show that the appellant had attempted to murder the victim. He is entitled to an order of acquittal on such charge.

28. In the light of the aforesaid discussion, I acquit the appellant of the charge under Section 307 of the Indian Penal Code. Conviction under Section 326 of the Indian Penal Code is modified and the appellant is convicted for the offence punishable under Section 324 of the Indian Penal Code. Sentence imposed on the appellant is accordingly altered. He shall suffer rigorous imprisonment for three years and to pay a fine of Rs.3,000/-, in default, to suffer simple imprisonment for one month more for the offence under Section 304 of the Indian Penal Code.

29. Bail bonds of the appellant are cancelled. He is directed to surrender forthwith and serve out the remainder of his sentence in accordance with law. In the event, he fails to do so, the trial Court shall issue appropriate processes for his apprehension and execution of the sentence.

30. With the aforesaid modification with regard to conviction and sentence, appeal is disposed of.

31. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

32. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

I agree.

**(Apurba Sinha Ray, J.)**

**(Joymalya Bagchi, J.)**

as/tkm