

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 28 of 2019

Bijay Adhikari
versus
The State of West Bengal and another

For the Appellant	: Mr. Jaydeep Kanta Bhowmik Mr. Sayantan Bhowmik.
For the State	: Mr. Aditi Shankar Charkraborty Mr. Abhijit Sarkar.
<i>Amicus Curiae</i>	: Ms. Pratusha Dutta Chowdhury

Heard On : 27.09.2023 & 05.10.2023

Judgement On : 05.10.2023

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction and sentence dated 23.09.2019 and 24.09.2019 respectively passed by the learned Additional Sessions Judge, 1st Court, Jalpaiguri in connection with Sessions Case No.232 of 2016 (Sessions Trial No.01(6) of 2017 arising out of Women Police Station Case No.161

of 2015, wherein the learned trial court was pleased to hold the appellant guilty and sentenced him to suffer four years for commission of offence punishable under Section 307 of the Indian Penal Code and further directed to pay compensation of Rs.10,000/-, in default a further period of rigorous imprisonment of three months was prescribed.

The genesis of the Women Police Station Case No.161 of 2015 dated 17.08.2015 was on the basis of a letter of complaint lodged by one Bidyut Biswas addressed to the Officer-in-Charge of said police station. The allegations made in the letter of complaint were to the effect that the complainant's daughter namely Bishaka Biswas had a relationship with the appellant, namely, Bijay Adhikari. The family members of the complainant were not aware in respect of such relationship and used to search for bridegroom but the appellant/accused on every occasion interfered for snapping such negotiations. Thereafter, the complainant learnt from his daughter that she had a relationship with the appellant/accused when he and his family members had an interaction with the appellant. The appellant firstly accepted and represented that he would inform the same to his family members about the proposal of marriage. The complainant proposed to get the marriage registered initially but the appellant represented that he would first solemnize by way of social marriage after sometime. The complainant thereafter learnt that the family members of the appellant collectively decided to break up

such relationship and to settle the appellant's marriage somewhere else. After having such knowledge the complainant restrained his daughter for associating with the appellant. However, both of them continued their relationship secretly. On 16.08.2015 at night the appellant took a SIM Card from the daughter of the complainant which had number 8759287140. The appellant represented to his daughter that his SIM Card was damaged and in order to keep contact with her he would require the SIM Card. On the same date at about 9.47 p.m. the appellant rang up from the said phone to his daughter and when the complainant's daughter came outside his house the appellant with an intention to kill his daughter chopped her severely with a sharp weapon on both side of his daughter's throat. His daughter instantly fell down on the ground in bleeding condition and started screaming. Hearing her scream, the complainant along with his family members rushed to the place of occurrence and found that there was blood stained knife in the appellant's hand and his daughter was lying on the ground in bleeding condition. The appellant on seeing the complainant hurriedly fled away. The complainant admitted his daughter at Jalpaiguri Sadar Hospital for treatment, she was in a critical condition and was undergoing treatment. The complainant alleged that the accused/appellant Bijay Adhikari acted at the instigation of the other accused persons for the reason that after

killing his daughter he could marry elsewhere. He, therefore, requested the police authorities to take steps.

The investigating officer on conclusion of investigation submitted charge-sheet before the learned CJM, Jalpaiguri and the case after being committed to the court of sessions finally was assigned to the learned Additional Sessions Judge, 1st Court, Jalpaiguri who after hearing all the parties was pleased to frame charges under Sections 120B/307 of the Indian Penal Code.

The records of the case reflect that the prosecution in order to prove its case relied upon nine witnesses which included PW 1, Bidyut Biswas, father of the victim; PW 2, Anuradha Biswas, mother of the victim; PW 3, victim; PW 4, Bishnu Biswas, a neighbour of the victim; PW 5, Kalsang Lhamo Sherpa, Sub-Inspector of Police attached to Women Police Station; PW 6 Dr. Tapan Kr. Maity who treated PW 3 on 17.08.2015; PW 7 Subal Ch. Sarkar, the first investigating officer of the case; PW 8 Smarajit Roy, Judicial Magistrate, who recorded the statement of the victim; PW 9, the second investigating officer of the case.

The prosecution in order to prove its case also relied upon number of documents which included the written complaint (Ext.1), the statement of the victim/PW 3 under Section 164 of the Code of Criminal Procedure (Ext.2), Formal FIR (Ext.3), injury report (Ext.4), rough sketch

map with index marked as (Ext.6), discharge certificate marked as (Ext.7), the copy of the requisition dated 20.08.2015 marked as (Ext.8).

The prosecution case mainly hinges on the version of PW 3 who happens to be the injured witness and corroboration of PW 1 and 2 who are parents of the injured witness.

PW-3 Bisakha Biswas in her evidence before the court stated that she had an affair with the accused/appellant and informed the same to her parents. Her parents accepted such marriage proposal and informed the guardian of the appellant to which they agreed and expressed the intention of solemnizing such marriage in the month of Baisakh. One of the SIM cards of the witness was lying with the accused and he rang her from the said SIM card on 16.08.2015 at about 9.30 p.m. and asked her to come out as he intended to gift her something. When she went out on receiving such phone call, she had an initial conversation for about 5 to 6 minutes and thereafter represented to her during such conversation to turn around for the purposes of the gift. Thereafter, the accused pressed her mouth with his left hand and struck her with a knife at both sides of her collar bone. She sustained severe bleeding injury on either side of her throat. She identified the accused person. She thereafter raised alarm when her father rushed out from their home and on seeing her father, accused Bijay fled away. She was taken to hospital and for about 12 days, she was treated over there. She narrated the incident to the

doctor. She was forwarded to the court by police after being discharged from hospital. She narrated the incident to a learned Magistrate who reduced the same into writing wherein she signed and identified such document along with the signatures which was marked as Exhibit-2 series.

So far as the evidence of PW-1 and PW-2 are concerned i.e. the parents of PW-3, the same is corroborated by them so far as the incident relating to relationship and marriage is concerned.

PW-4 being a neighbour has not seen the incident or any injury but had taken the victim to the hospital.

PW-5 was the investigating officer who was initially endorsed the investigation when he registered the case in his own handwriting and as such identified the formal FIR and the signatures therein.

PW-6 happens to be the Doctor/ENT surgeon and he stated that he treated Bisakha Biswas PW-3 who was admitted having sharp cut lateral injury on both sides of the neck. According to the doctor, the nature of injury was simple and the injury on the right side was 1" X 1" X 1" and on the left side 3" X 1" X 1". Doctor also stated that he found that the skin was cut and muscles and vessels on either side were also affected. He identified the injury report which was admitted in evidence.

PW-7 happens to be one of the investigating officers who prepared the rough sketch map with index and recorded the statement of some

material witnesses. The witness also forwarded the victim to the learned Magistrate for her statement being recorded under Section 164 of the Code of Criminal Procedure.

PW-8 is the learned Magistrate who recorded the statement and issued a certificate at the bottom of the statement.

PW-9 is the investigating officer who submitted charge-sheet in connection with the instant case.

I have considered the submission of the learned advocate for the appellant who initially emphasised on the issue relating to the incident and as to whether the same at all took place. Learned Advocate drew the attention of the court to the factum of the name of the present appellant never being divulged and was narrated by the victim for the first time in court. Learned advocate has also emphasized on the series of incidents which have been referred by the witnesses and lack of corroboration in the testimony of the prosecution witnesses which according to him failed to prove the case beyond any reasonable doubt, far less that the prosecution has been able to prove the case to warrant the conviction. In fact it was stressed that the medical documents itself reflect that the injury is simple and the police authorities purposely has incorporated Section 307 of the Indian Penal Code without assessing whether there was at all any intention on the part of the appellant to terminate the life of the victim PW-3.

Mr. Sarkar, learned advocate appearing for the State has drawn the attention of the court to the statements of the different witnesses and submitted that there is a ring of truth attached to the statement of all the witnesses particularly with regard to the relationship, the injuries, the subsequent snapping of ties and additionally, the defence having failed to make out any case from the inception for false implication of the accused.

It has been further contended on behalf of the State that both the victim and her father who immediately reached the place of occurrence have expressed the conduct of the accused/appellant who had every intention to kill the victim. According to the learned advocate for the State, the motive behind the incident is clearly established in addition to the fact that a post occurrence witness being present has seen the accused with blood-stained knife and the victim who fell on the ground after sustaining grievous injury.

I have taken into account the version of the appellant as well as that of the State. From the chronology of event which has taken place, it reflects that the incident happened on 16.08.2015 at night approximately between 9.30 p.m. and 10.30 p.m.

The records of the case reflect that the police authorities for the first time were informed regarding the incident at about 6.35 pm on 17th of August, 2015. The medical report/exbt. 4 reflects that the

victim/P.W.3 was treated on 17th of August, 2015 and, although the said document do not reflect any time period but the accompaniment states that she had been to the hospital at about 10.55 am.

Having considered that the treatment commenced almost after 12 hours of the incident and the factum that the opinion of the doctor is that the nature of the injury is very simple, I am unable to accept the findings of guilt so far as the offence under Section 307 of the IPC is concerned.

However, having regard to the factum that there were injuries and a consistent version appearing in the evidence which, in cross-examination, could not be diluted and that a motive existed, particularly which relates to an initial relationship between the victim and the appellant, primary decision of both the families for marital tie-up and subsequently break-up of the marital tie-up. To that extent, the attack on the victim having taken place on 16th of August, 2015 under no circumstances can be ruled out.

Having regard to the settled proposition of law particularly with the evidential value and/or testimony of an injured witness as has been settled by the Hon'ble Supreme Court in Abdul Sayeed vs. State of M.P. reported in (2010) 10 SCC 259, the relevant paragraphs of which are set out as follows:

“28. *The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness.” [Vide Ramlagan Singh v. State of Bihar [(1973) 3 SCC 881 : 1973 SCC (Cri) 563 : AIR 1972 SC 2593] , Malkhan Singh v. State of U.P. [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12] , Machhi Singh v. State of Punjab [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] , Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696] , Bonkya v. State of Maharashtra [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113] , Bhag Singh [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163] , Mohar v. State of U.P. [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472] , Vishnu v. State of Rajasthan [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302] , Annareddy Sambasiva Reddy v. State of A.P. [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630]*

and Balraje v. State of Maharashtra [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] .]

29. *While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under : (SCC pp. 726-27, paras 28-29)*

“28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand [(2004) 7 SCC 629 : 2004 SCC (Cri) 2013] a similar view has been reiterated observing

that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.”

30. *The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”*

So far as the settled proposition that there being an in-built guarantee on the version of the injured witness is concerned, the presence of the accused at the crime scene cannot be ruled out.

Taking into account the injuries so sustained, I am of the opinion that the same makes out a case under Section 324 of the IPC.

Accordingly, the findings of guilt under Section 307 of the IPC is altered to section 324 of the IPC.

The records of the case reflect that the petitioner in course of the trial as well as during the pendency of the appeal has already suffered almost five months.

Having regard to the period which the present appellant has already suffered, I am of the view that, in the background of the facts and circumstances of the case, the period of detention which has already been undergone by the appellant, is sufficient for the purposes of the present case.

However, the appellant would deposit the amount of fine as directed by the Ld. Sessions Court in the alternative the default clause would operate, in case, such amount is not deposited.

With the aforesaid observations, CRA 28 of 2019 is partly allowed.

The appellant is directed to deposit a sum of Rs.10,000/- within 30th of November, 2023 before the Ld. CJM, Jalpaiguri. On receipt of the same, the Ld. CJM, Jalpaiguri will not execute any part of the default

sentence and would accept the period which has already been undergone by the appellant.

The appellant is on bail and he shall continue on the same bail and bond till 1st of December, 2023.

In case, such amount is not deposited, in that case, the ld. Trial Court shall execute by way of Section 421 of the Cr.P.C. for recovery of the amount and cancel the bail, which he will enjoy till 1st of December, 2023.

Let the respective Lower Court Records be sent to the Ld. Trial Court as well as the Ld. Magistrate Court.

The department is directed to communicate this order to the Ld. CJM, Jalpaiguri.

Pending application, if any, is consequently dismissed.

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

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

(Tirthankar Ghosh, J.)

