

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

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA (SB) 29 of 2023

VHALU @ VHALU RAM ROY @ BHELU ROY
VS.
THE STATE OF WEST BENGAL

For the Appellant	: Mr. Aniruddha Biswas, Adv.
For the State	: Ms. Aditi Shankar Chakraborty, Ld. APP Mr. Nilay Chakraborty, Adv.
Hearing concluded on	: 1 st September, 2023
Judgement on	: 1 st September, 2023

Siddhartha Roy Chowdhury, J.:

1. Challenge in this criminal appeal is to the judgment and order of conviction passed by learned Additional Sessions Judge, Fast Track 1st Court, Jalpaiguri in Sessions Case No. 347/2016.
2. By the impugned judgment learned trial court recorded an order of conviction against Bhelu Roy for committing an offence within the meaning of Section 325/447/341 of the Indian Penal Code and sentenced him to suffer imprisonment for three years for committing the offence under Section 325 of the Indian Penal Code to pay fine of Rs.2000/- with default clause simple imprisonment for three months and fine of Rs. 500/- for committing an offence under Section 447 of the Indian Penal Code and simple imprisonment for one month with a fine of Rs. 500/- for committing offence under Section 341 of the

Indian Penal Code subject to the provision of Section 428 of the Criminal Procedure Code.

3. Heard Mr. Biswas, learned counsel, representing the convict/appellant and Mr. Aditi Shankar Chakrabarty, and Mr. Nilay Chakraborty, learned counsel for the State.
4. On the basis of written information given by Kulada Roy to the Inspector-in-Charge, Dhupguri Police Station on 15th February, 2014, wherein it was disclosed that at about 3.30 hours in the morning when his father Anukul Roy came out of the room to attend nature's call, he found Bhelu Roy, his neighbor on the courtyard of his house. Suddenly Bhelu Roy attacked his father with a knife and landed five blows of knife on the back of his father. When his mother came to the rescue of his father, she was not spared. Bhelu Roy penetrated the knife to the back of his mother. Kulada Roy took his parents to Dhupguri Hospital, from there to Jalpaiguri District Hospital where both his parents were admitted.
5. The information since disclosed offence cognizable in nature Dhupguri Police Station Case No 68/2014 under Sections 447/341/326/307 of the Indian Penal Code was registered. Police took up investigation and submitted a charge sheet.
6. On 16 March, 2017 considering the materials collected in course of investigation, learned trial court framed charge under Sections 447/341/326/307 of the Indian Penal Code.
7. Out of 13 charge-sheeted witnesses prosecution examined five witnesses. The victim PW-2 Anukul Roy, stated that Bhelu Roy

stabbed him on his waist, rib, left arm and back. He screamed for help that attracted his elder son, who came to this spot his wife also came there Bhelu Roy assaulted his wife as well. He was taken to Jalpaiguri Sadar Hospital.

8. Dr. Subrata Roy, the Medical Officer, who attended the victim, as PW-5 stated that he only found some lacerated injuries on the person of the victim who was forwarded to Hospital in connection with Dhupguri Police Station Case No. 68 of 2014. Dr. Roy, PW-5 opined that the injuries were simple in nature. The injury report Exhibit-3 does not also speak for any injury grievous in nature.

9. Learned trial court could not have recorded the order of conviction under Section 325 of the Indian Penal Code when the victim was found to have suffered injuries simple in nature.

10. Section 325 of the Indian Penal Code says:-

“325. Punishment for voluntarily causing grievous hurt.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”.

11. Basic condition to record an order of conviction under Section 325 of the IPC is that there has to have grievous injury.

12. It is submitted by Mr. Biswas that at best the victim could have been found guilty for committing offence under Section 323 of the Indian Penal Code. Though it is the specific case of the prosecution that the wife of Anukul Roy was also stabbed by the convict/appellant

but no injury report was produced before the court to substantiate such claim. As PW-3, Fulmati Roy stated that while she went to rescue her husband, Bhelu Roy threatened to assault her but she fled away.

13. Under such circumstances, I am of the view that the impugned judgment warrants interference. The convict/appellant, Bhelu Roy is found guilty to the charge under Sections 323/447/341 of the Indian Penal Code as the incident took place on the courtyard of the victim.
14. The convict has already suffered imprisonment for more than maximum prescribed period punishment for committing the offence under Section 323 of the Indian Penal Code.
15. It is very unfortunate to note that learned trial court while convicting the appellant and directed him to suffer imprisonment for three years, did not consider the provision as laid down under Section 389(3) of the Code of Criminal Procedure.
16. Learned trial court is directed to henceforth he should remain alive to this provision of law.
17. The appellant/convict be set at liberty at once.
18. Learned Chief Judicial Magistrate, Jalpaiguri is directed to issue release the order in favour of this convict/appellant positively by tomorrow and shall file report compliance by next Monday.
19. Let a copy of this judgment be sent down to the learned trial court immediately.
20. All parties shall act on the server copies of this order duly downloaded from the official website of this court.

(SIDDHARTHA ROY CHOWDHURY, J.)