

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 57 of 2001

Parajit Chatterjee

-Vs-

Shankar Chatterjee & Ors.

For the Appellant : Mr. Sanat Kumar Das
Mr. Sujan Chatterjee
Mr. S. Sinha

For the Opposite Party : Mr. Samir Ahamed
Mr. Arka Ranjan Bhattacharya

Heard on : 13.09.2023, 05.12.2023

Judgment on : 07.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of acquittal dated 22.09.2000 passed by the Learned 1st Class Judicial Magistrate, Hooghly Sadar, in C.R. Case No. 529 of 1996 & T.R. Case No. 1068/96. Acquitting the accused persons of the charge under Section 448/323/506 of the Indian Penal Code.
2. The prosecution story in a nutshell was that the appellant filed a complaint case no. 1153 before the Learned C.G.M. Hooghly alleging that on 17.11.96 at about 12:30 hrs. Shankar Chatterjee, Monika Chatterjee and Jhumpa Chatterjee forming an unlawful assembled enter into the house of the

appellant and assaulted him with bamboo, fists, blows and slaps as a result he sustained bleeding injuries on his left little fingers and left elbow etc. The wife of the appellant was also assaulted by the opposite parties 3 & 4 when they went to rescue the appellant. They also used filthy languages and threatened the complainant. The appellant also sustained injury in his forehead and went to police station and lodged a diary being no. 1153 dated 17.11.96. He went to Chinsurah Emambara Hospital where he was examined by Doctor. Upon the said complained C.R. Case No. 529 of 1996 was started against the opposite parties.

3. Summons were issued under Section 448/323/506 against the accused persons. Thereafter considering the materials of the records all accused were examined under Section 251 of Cr.P.C. Upon denial of such charge case was put to trial.
4. Four prosecution witnesses were examined out of which PW-1 was Doctor Paritosh Kumar Bit, PW-2 was the complainant himself, PW-3 was Smt. Nilima Chatterjee the wife of the appellant and PW-4 was Nihar Kabiraj independent witness.
5. PW-1 in his evidence stated that on 17.11.06 he examined the appellant and found injuries were fresh and simple which are caused by heart blunt object. PW-1 was the complainant who stated that on 17.11.96 at about 12:30 hrs. the 3 accused person came in a body and attacked him. The opposite party no. 2 tried to hit the appellant with Lathi on his head. In order to save his head he caught hold of the Lathi and thus his left little finger's nail was damaged. At that time Tumpa Struck his left hand with another bamboo

stick as such he sustained injury on his left elbow. That the appellant stated that at the shouting his wife and his daughter came, at this Monika and Tumpa caught their hair by hand and Tumpa struck them with fists and blows. When the local people came they all went away. The statement was not shaken by cross-examination.

6. PW-3 Smt. Nilima Chatterjee corroborated the statements made by PW-1 in each and every respect.
7. PW-4 the independent witness also corroborated the statements made by PW-1, PW-2 and PW-3.
8. Learned Advocate for the appellant submitted that –
 - i. The Learned Magistrate should have held that the occurrence was immediately reported to the police station vide G.D. No. 1153 dated 17.11.96.
 - ii. The appellant immediately after the incident went to hospital.
 - iii. The evidence of PW-1, the Doctor should have been given importance.
 - iv. The occurrence of the incident was corroborated by PW-1 and PW-4 who were the independent witnesses.
9. A circumspection of the prosecution witnesses revealed as follows:-
 - i. PW-1, the doctor, in his deposition stated that on 17.11.96 he was posted at Chinsurah Sadar Hospital. On that day he examined one Parajit Chatterjee, S/o- Late Amullya Chatterje, aged 42 years of Satyapirtala at 1.30 p.m. and found the following injuries:
 - a. One abrasion in the back of forearm - 1 ½" x ½"
 - b. Partial (illegible) of little finger nail.

PW-1 further stated that the patient was referred to Chinsurah P.S. All the injuries were fresh and simple and caused by hard blunt object. He opined the injuries might be caused if one was assaulted by lathi.

- ii. During cross-examination PW-1 stated that on that day he also examined Bablu Chatterjee, S/o- Late Amullay Chatterjee. The injuries might have caused if one was fallen down hard.
- iii. PW-2/appellant in his deposition stated that he knew all the accused persons. PW-2 identified the accused persons in Court. On 17.11.1996, Sunday at 12.30 noon three accused persons entered into his house without permission. Sankar Chatterjee tried to hit on his head with a stick, however, he caught it with his right hand. Due to the blow of the stick the nails of his right hand came out. At that relevant point of time Tumpa hit him on his left hand little finger with a bamboo stick. Due to the pushing and shoving during that time accused Shankar Chatterjee slipped and fell down and received a small injury on his head. Thereafter, PW-2's wife came to rescue him at that time Monika and Tumpa got hold of her fistful of hair and started fisting, slapping and punching her. Then the witnesses came and separated all. The incident took place inside his house. The accused persons rebuked them in abusive language. They suffered pain in their body. PW-2 lodged a diary in the police station on that day. PW-2 was sent to Chinsurah Hospital from the police station and again he was treated there. As the police station did not take any action, he filed a case in the Court next day.

- iv. During cross-examination PW-2 stated that accused Shankar Chatterjee was his own brother. Monika was his brother's wife and Tumpa was his brother's daughter. A partition suit was pending regarding his land with the accused persons. They were five brothers. Two cases were pending against accused persons. After the instant case was filed, accused Monika Chatterjee had filed a domestic violence case against them. PW-2 worked as a lorry driver.
- v. PW-3 in her deposition stated that the incident took place on 17.11.1996 at her resident at about 12-12.30 in the afternoon. At that relevant point of time accused persons entered into her house with a bamboo stick without her permission. Bablu @ Shankar Chatterjee was carrying a bamboo stick and Tumpa was carrying bamboo. Bablu was trying to hit her husband with the bamboo stick on his head. When her husband tried to resist him from hitting him with a bamboo pole, with his right hand, he injured his small finger and blood came out from his head. When her husband tried to get rid of Bablu, he had hit the wall and received a small injury. Thereafter Tumpa came and hit her husband with a bamboo piece on his elbow. For that blood came out from that area. When she tried to rescue her husband, the three accused persons had punched, boxed and slapped her as well as her husband. They dragged her by her hair. Thereafter her son and six boys from the locality came and rescue them. They were abused and were threatened at a hospital and lodged a diary in the police station. She identified the accused persons in Court.

- vi. During her cross-examination PW-3 stated that her husband looks after lorry. Accused persons had lodged a complaint of domestic violence against PW-3 and her husband.
 - vii. PW-4 in his deposition stated that he knew the appellant and the accused persons. He identified both the parties in Court. The incident occurred on 17.11.1996 in the house of Parajit Chatterjee/PW-2 at about 12-12.30 in the afternoon. At that point of time, he went near the petitioner's house and saw Shankar Chatterjee was going to beat Parajit with a bamboo stick, when he tried to restrict him with his hand from trying to beat him with one bamboo stick, one of his nail of his right hand came off and blood came out. Parajit snatched away the bamboo pole. Thereafter, Tumpa Chatterjee hit his left hand with a piece of splint bamboo. When Parajit's wife came to save him, the three accused persons together beaten with fisted hands, slapped, boxed Parajit and his wife. PW-4 stopped them.
 - viii. PW-4 in his cross-examination stated that his house was at Rabindranagar. He drove car. He had good relationship with Parajit Chatterjee.
10. In the instant case, the injury report was not exhibited. Admittedly there was a dispute between the parties concerning partition of a land. The Learned Trial Court was justified in acquitting the opposite parties.
11. On perusal of the materials on record and considering the submissions of the Learned Advocates for both the parties, this Court is of the opinion that the Learned Magistrate has considered the relevant legal aspects in

determining the impugned judgment and order with reasons. This Court is not inclined to interfere with the same as it is against an order of acquittal and in absence of gross illegalities, irregularities, non-appreciation of proper evidence on record it is not prudent to intervene with the same.

12. In view of the above discussions, the instant criminal appeal is dismissed.

13. There is no order as to costs.

14. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

15. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)