

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.A. 81 of 2020

With

CRAN 3 of 2020

With

CRAN 4 of 2020

With

CRAN 5 of 2021

With

CRAN 6 of 2022

Samaul Hoque.

versus

The State of West Bengal.

For the Appellants : Mr. Sekhar Kumar Basu, Sr. Adv.
Mr. Soubhik Mitter,
Ms. Rajnandini Das,

For the State : Ms. Sreyashee Biswas,
Ms. Puja Goswami.

Reserved On : 24.09.2024.

Judgement On : **03.10.2024.**

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction dated 30.01.2020 and 01.02.2020 passed by the learned Additional Sessions Judge, F.T.C., 2nd Court, Malda, in Sessions Trial No. 10(04)2019, arising out of Sessions Case No. 176 of 2019, wherein the learned trial Court was pleased to convict the appellant under Sections 341/307 of the Indian Penal Code and sentenced him as follows:

- (i) For the offence punishable under Section 307 of IPC - to suffer rigorous imprisonment for 7 years and to pay fine of Rs. 10,000/-, i.d. to suffer further R.I. for 4 months and
- (ii) For the offence punishable under Section 341 of IPC - to suffer rigorous imprisonment for 15 days.

Kaliachak Police Station Case No. 786/17 dated 03.11.2017 was registered for investigation under Sections 341/325/308 of the Indian Penal Code, pursuant to a complaint submitted by Mahibar Rahman against Samaul Haque. The allegations made in the written complaint addressed to the inspector-in-charge, Kaliachak Police Station, were to the effect that on 01.11.2017 at about 8 a.m. the accused started constructing a brick house forcefully on the land of the complainant when his son Abdul Halim @ Roni (aged about 23 years), restrained him, when the accused assaulted his son on his head with an iron rod with the intention of murdering him, thereby causing serious bleeding injury. At first, his son was taken to Silampur Rural Hospital, where the doctor treated his son and referred him to Malda Medical College and Hospital for better treatment. His son was under treatment at Malda Medical College and Hospital in a serious condition and the injuries on his head had to be stitched. As he was busy with the treatment of his son there was some delay in lodging the complaint. He earnestly prayed before the police authorities to take appropriate legal action against the accused.

On receipt of the aforesaid complaint, a case was registered and the inspector-in-charge of Kaliachak Police Station assigned the case to Radha Raman Singha, Sub-inspector of police for investigating the case. The investigating officer on being assigned with the investigation of the case examined several witnesses, collected the injury report, and after consultation with the superior officers, submitted charge-sheet under Sections 341/325/308 of the Indian Penal Code before the learned Chief Judicial Magistrate, Malda. The case was thereafter committed to the Court of Sessions Judge, Malda and the proceedings were thereafter transferred to the learned Additional Sessions Judge, Fast Track Court, 2nd Court, Malda for trial and disposal. The learned trial Court was pleased to frame charges against the accused under Sections 341/325/307/308 of the Indian Penal Code. The contents of the charges were read over to the accused person to which he pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case, relied upon 12 witnesses, which included PW1, Mahibar Rahaman, complainant; PW2, Md. Selim Akhtar, brother of the injured and son of complainant; PW3, Habibur Rahaman, co-villager; PW4, Esah Haque Sk, an acquaintance; PW5, Rejaul Sk, an acquaintance; PW6, Abdul Halim, injured and son of the complainant, PW7, Nur Alam, an acquaintance; PW8, Mujibar Rahaman, an acquaintance; PW9, Dr. Md. Abdur Razzaque Ali Biswas, medical officer who treated the injured at Silampur Rural Hospital; PW10, Krishna Das, A.S.I. of police who prepared formal FIR; PW11, Dr. Prasanta Kumar Roy, medical officer at Malda Medical

College and Hospital who treated PW6 (injured); PW12, Radha Raman Singha, investigating officer of the case.

PW1, Mahibar Rahaman is the complainant and father of the injured Abdul Halim who deposed that he lodged the complaint against Samaul Haque who is his brother. He identified the written complaint which was prepared under his instructions and read over and explained to him, on being satisfied he signed the same. He narrated that one Kishore Saha was the scribe of the written complaint. On his identification the written complaint was admitted in evidence. The witness proceeded to explain the incident before the Court that on 01.11.2017 at about 8.00 am, the accused started raising construction and he used to abuse him frequently, so he did not speak with him. But his son, Abdul Halim, was present at the house and questioned the act and action of Samaul Haque regarding raising construction on their land. The accused replied that he was raising construction on his own land and advised them to find their property. At that time Abdul Halim told the accused that he will not be allowed to raise further construction, when the accused with iron rod assaulted a single blow on the head of Abdul Halim @ Roni. After receiving the blow, the injured fell on the ground and became unconscious. It was disclosed before the Court that at the relevant point of time, the accused was standing on a brick-built structure like a wall and his son was standing below it and while standing on that brick-built structure, the accused inflicted a blow with the iron rod/sabot, consequent to which Abdul Halim suffered bleeding injury and he was shifted to Silampur PHC. The doctor at the PHC administered stitches

on his head. He was admitted for one day and thereafter referred to Malda Medical College and Hospital. On 03.11.2017 he lodged a written complaint relating to the incident and there was a delay as he was busy with the treatment of his son who was admitted at Malda Medical College and Hospital. In cross-examination he replied that the distance between his residence and Silampur PHC is about 4-5 km and after 30 minutes of the incident he took his son by a van to the PHC and informed the doctor regarding the incident and time of occurrence. In cross-examination, on being asked, he reiterated the whole of the incident relating to the conflict between his brother/ accused and his son and the manner in which his son was injured by the accused. Further, he admitted in cross-examination that there was a dispute relating to their land and a case is pending before the Civil Court. However, he failed to recollect the number of the case.

PW2 is Md. Selim Akhtar, brother of the injured and son of the complainant, who identified the accused on dock and proceeded to state that the accused was his uncle. On 01.11.2017 at about 8.00 am in their house, the incident occurred. There was a dispute regarding land with his father. His father and brother inquired about the land, when his brother questioned the accused regarding land affairs, the accused assaulted with an iron rod on the head of his brother. As a result, his brother suffered bleeding injury and became unconscious. The injured was taken to Silampur PHC. After treatment, he was referred to Malda Medical College and hospital. His father thereafter, lodged a written complaint. In cross-examination he reiterated the incident as

was stated in examination-in-chief but he could not recollect the exact date of admission of his brother at Malda Medical College and Hospital.

PW3 is Habibur Rahaman, a co-villager who deposed that he knew both Roni @ Abdul Halim, the injured and the accused Samaul Haque. He identified the accused. He narrated the incident of assault by the accused upon Abdul Halim which took place 2 years ago, as a consequence of which Abdul Halim @ Roni suffered bleeding injuries on his head. He heard the same from the local villagers. In cross-examination he replied that he is unable to recollect whether police took his signature or not and the accused was also a resident of his village and a co-villager.

PW4, Esa Haque Sk., an acquaintance who deposed that he knew both the injured Roni Sk. as well as the accused Samaul Haque. He identified the accused in Court, however he denied of any knowledge relating to any incident between Roni and Samaul Haque.

PW5, Rejaul Sk. is an acquaintance who deposed that he knew the injured Roni @ Abdul Halim and the accused Samaul Haque. He identified the accused in Court. He narrated that the incident of assault by the accused upon the injured Roni occurred two years ago, when Roni sustained head injury as a result of such assault. According to him, the residence of the accused and the injured were adjacent to each other. In cross-examination, he denied that he was deposing falsely in respect of the incident before the Court.

PW6, Abdul Halim is the injured who deposed that Mahibar Rahaman is his father who lodged the complaint against the accused Samaul Haque for assaulting him. He identified the accused in Court and proceeded to narrate that there was a dispute relating to land and the land in question belonged to them. However, the land was never measured with the help of Amin. The accused was raising a structure forcibly on their land and when he raised protest against the accused to refrain from raising any further construction as the particular portion belonged to them, immediately the accused took up an iron made sabol which was lying there and assaulted on the middle of his scalp, when he lost his sense. He continued to depose that he sustained bleeding injuries and his wearing apparel and body were drenched with blood. Consequently, he fell down on the ground and was shifted to Kaliachak Rural Hospital and after a considerable period of time he regained his sense at the hospital. He narrated that the date of the incident was 01.11.2017 at about 7.30 – 8.00 am and it was Wednesday when the incident occurred. Nine stitches were applied to the wound on his head, when he was senseless and as such he was referred to Malda Medical College and Hospital where he was admitted for three days. In cross-examination he replied that police did not seize any blood-stained wearing apparel and he was not aware regarding the time of admission at the rural hospital and on the evening of the very day he was referred to Malda Medical College and Hospital. In reply to further cross-examination in respect of the incident, he reiterated the incident which took place as stated in his examination-in-chief.

PW7, Nur Alam is an acquaintance who deposed that he knew both the complainant, Mahibar Rahaman and the accused Samaul Haque. However, he denied any knowledge regarding any incident which took place between Roni Sk and the accused Samaul Haque.

PW8, Mojibar Rahaman is an acquaintance who deposed that he knew both Mahibar Rahaman and the accused Samaul Haque and further narrated that he heard from the local villagers that a scuffle took place between the accused Samaul Haque and Roni Sk and as a result the accused assaulted Roni Sk with iron-made sabol and fled away. In cross-examination he replied that whatever he has stated is not false as he heard the same from the local villagers.

PW9, Dr. Md. Abdul Rezzaque Ali Biswas is a medical officer attached to Silampur Rural Hospital, Kaliachak. He deposed that on 01.11.2017 he examined a patient named, Abdul Halim and on examination he found three inches length skin thickness depth lacerated wound over anterior aspect of right side of forehead and so nine stitches were given. He opined that such kind of injury may occur if a person is given blow by blunt object such as iron rod. He identified the medical report which was written and signed by him and the same was admitted in evidence. He also identified the indoor treatment-sheet dated 01.11.2017 issued to the patient on emergency after his treatment at Silampur R.H. In cross-examination he replied that the patient suffered injuries which required stitching and accordingly the wound was stitched. On

cross-examination by the accused he replied that if a person falls on hard surface or hit by hard substance he may get such type of injury.

PW10 is Krishna Das, ASI of police who deposed that on 03.11.2017 the Inspector-in-charge of Kaliachak police station was Suman Chatterjee and he was working as a Duty Officer when he received a complaint from one Mahibar Rahaman who identified the endorsement in the written complaint which was admitted in evidence and also the formal FIR which was written and signed by him which was also admitted in evidence. At the time of cross-examination he replied that he signed the receiving endorsement on behalf of the Inspector-in-charge, Kaliachak police station and started the case as per instruction of I/C, Kaliachak Police Station.

PW11 is Dr. Prasanta Kumar Roy who was attached to Malda Medical College and Hospital. He deposed that on 01.11.2017 he examined one Abdul Halim, son of Mahibar Rahaman who was referred from Silampur Hospital with history of physical assault with loss of consciousness. On examination he found head injury of the patient and advised him for C.T. Scan of brain. Some medicines were also prescribed to the patient. On the next day during morning hour in the C.T. Scan report he found no abnormality of the patient except scalp haematoma at the right fronto parieto temporal region and he was therefore advised for discharge. His attention was drawn to the "Record of In-patient" which reflected under the heading 'Final Diagnosis' physical assault; soft tissue trauma (simple); C.T.> NAD. However, according to him the patient

did not take discharge on that date and the patient was seen during the evening round. On 03.11.2017 during morning hours he found the patient to be stable and he was discharged. The discharge summary was signed by him and he also identified the other treatment-sheets which were admitted in evidence. In cross examination he replied that if a person falls on any hard substance then this type of injury may occur.

PW12, Radha Raman Singha is the Investigating Officer of the case who deposed that at the relevant time the Inspector –in-charge of the police station was A.S.I. Krishna Das and he was endorsed with the case. During investigation he visited the place of occurrence, prepared rough sketch map with index of the place of occurrence, examined available witnesses and recorded the statement under Section 161 of Cr.P.C., collected the injury report of the victim from Silampur Hospital as well as Malda Medical College and Hospital and after completion of investigation he submitted charge-sheet after consultation with the superior officer against the accused on 30.11.2017 being charge-sheet No.683/2017 for offenses under Sections 341/325/308 of the Indian Penal Code. In cross-examination he replied that he perused the injury report as well as the written complaint and admitted that there was a discrepancy with regard to time of occurrence on both the documents. He denied the suggestion that the investigation was carried out in a perfunctory manner and was a result of table work.

Mr. Shekhar Basu learned senior advocate appearing on behalf of the appellant argued that there are inconsistencies in the statement of the

witnesses and the prosecution has also failed to adduce evidence regarding the time, manner and nature of the incident which raises serious doubt as to the truth attached to the incident. According to the appellant there is an unexplained delay of two days in lodging the FIR and no acceptable explanation was offered as to why after 48 hours the complainant chose to submit the complaint and even no information was furnished to the local authority. It was further pointed out that there was a civil dispute existing in respect of a piece of land between the two brothers one of whom is the complainant and the other the accused. It was admitted that no wall was being constructed on the property at the relevant point of time and the prosecution also did not lead any evidence or produce any document in support of such claim. So far as the injuries are concerned, according to the appellant both the medical officers PW9 and PW11 who were examined in the present case admitted that if any person falls on any hard substance such type of injury may occur. Further it was pointed out by drawing the attention of the Court that the doctor of Malda Medical College and Hospital i.e. PW6 stated that even after the patient was discharged he did not take discharge and over stayed in the hospital for another day. The attention of the Court was also drawn to the fact that PW6 was re-examined and after three and a half months the original discharge certificate of Malda Medical College and Hospital along with the C.T. Scan report was produced before the Court. According to the appellant there are major deviations in the prosecution case which touches the root of the incident

and as such the same do not inspire confidence for arriving at a conclusion regarding his guilt, so he may be acquitted of the charges.

On the other hand learned advocate appearing for the State refuted the contentions and submitted that the injured PW6 has narrated the incident which involves the accused assaulting him with an iron rod/sabot. Such fact was corroborated by the complainant. There is consistency in the version of majority of the prosecution witnesses in respect of the accused Samaul Haque having assaulted the injured PW6 with an iron rod on his head. The medical evidence of PW9 and PW11 reflect that there was an injury on the head and in fact one of the doctors have illustrated the nature of the injury sustained by the injured that is PW6 for which he assigned the reason that he had to administer nine stitches. The injured was referred to a better hospital that is Malda Medical College and Hospital from the rural hospital concerned and the evidence of the doctor i.e. PW11 also reflect that there was scalp haematoma at the frontal parietal temporal region although no abnormality was found in the C.T. scan report. Learned advocate for the State therefore emphasized that PW1 was an eyewitness, PW6 was the injured and the medical reports of PW9 and PW11 do corroborate the version of PW1 and PW6. There is nothing on record except certain routine suggestions to deny the incident or the injury which was inflicted upon the victim. It was emphasized that the version of PW1, PW6, PW9 and PW11 taken as a whole makes out a case which is sufficient to hold that it is the accused Samaul Haque who only committed the offense and as such he should be punished. Lastly it was prayed that there is

no scope for interference in the judgment and order of conviction passed by the learning trial Court and as such the judgment relating to order of conviction and sentenced so passed, should be affirmed.

I have taken into account the version of all the witnesses who deposed in support of the prosecution, the arguments advanced on behalf of the appellant and the submissions of the learned advocate appearing on behalf of the State. On an assessment of the evidence, I find that the evidence of PW6 who is the injured, so far as his injuries are concerned were never exaggerated and both PW1 and PW6 referred to a single blow with an iron rod on the head of PW6. PW6 being an injured witness, his evidence assumes importance as in cross-examination of all the witnesses except suggestions relating to routine denial of the incident the only question of relevance are those which were confronted to the doctors that the injury could have been because of falling on a hard substance. The evidence of the doctor do suggest the complicity of the present appellant and the injuries complained of do also suggest that it was grievous in nature as there were nine stitches which were applied on the wound of his head.

So far as the principles relating to testimony of an injured witness is concerned the same has a distinctive relevance in appreciation of the evidence of witnesses. PW6 is an injured witness, his evidence as such is to be considered with added importance. In *Mano Dutt -Vs. – State of U.P.*, (2012) 4 SCC 79 it has been held as follows:

“.....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.....”

In the light of the observations made above, I find that so far as the evidence of the prosecution is concerned, prosecution has been able to prove the case beyond reasonable doubt, relating to the factum that the accused with an iron rod inflicted blow on the head of the injured, so the complicity of the appellant in the present case under any circumstances cannot be ruled out. However, having regard to the nature of the injury and the circumstances under which the incident happened I am of the view that case under Section 307 of the Indian Penal Code is not made out as no intention is reflected in the evidence that the accused had any intention to murder the injured. Accordingly, the facts and circumstances suggest it would be proper to convict the appellant under Section 326 of the Indian Penal Code instead of Section 307 of the Indian Penal Code.

Therefore, the appellant is convicted under Section 326 of the Indian Penal Code. Regarding the sentence, it is found from the records that the appellant was in custody since 30.01.2020, following the trial Court's

conviction and was detained till 9th of June, 2020. Having regard to the period of detention served by the appellant, I am of the opinion that the sentence in this case should be reduced to the period already served by the appellant.

Consequently, the conclusions are summarized as follows:

- (i) The appellant is convicted under Section 326 of the Indian Penal Code.
- (ii) Sentence of the appellant is reduced to the period which has already been suffered and undergone by him.

Accordingly, CRA 81 of 2020 is **partly allowed**.

Pending connected applications, if any, are also disposed of.

Department is directed to send back the Trial Court Records immediately. A copy of the judgment be forwarded to the learned Trial court immediately for compliance regarding the directions given above.

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

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

(Tirthankar Ghosh, J.)