

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

Present:

The Hon'ble Justice Tirthankar Ghosh

CRA 122 of 2019

***Damu Singh*
versus
The State of West Bengal**

For the Appellant : Mr. Soumik Ganguli,
Mr. Abhijit Singh
Mr. Sarthak Mondal.

For the State : Mr. Debasish Roy, Id. PP
Ms. Minoti Gomes
Mr. Samarjit Balial.

Heard On : 19-07-2024

Judgement On : 19.07.2024

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction and sentence dated 07-01-2019 passed by the learned Additional Sessions Judge, Khatra, Bankura in Sessions Trial No. 9(1) of 2015 arising out of Sessions Case No. 4(4) of 2014 wherein the appellant was convicted under Sections 323/324/341/506 IPC.

The genesis of the case was on the basis of Taldangra P. S. Case No. 1 of 2014 dated 07-01-2014 which was initiated at the instance of Mangal Majhi. The brief allegations which lead to the registration of the FIR was that informant namely, Mangal Majhi was returning from market on 07-01-2014 at 1 pm when the present appellant namely, Damu Singh hit him on his two legs badly. Consequently, the informant fell down. The appellant thereafter took the informant to his house, tied him and severely assaulted him.

It is further alleged that the accused/appellant tried to injure him with the aid of sharp cutting weapon when his son Sukumar Majhi came and saved him. Thereafter, the accused/appellant threatened the family for burning them to death, as a result of which the family members were panic-stricken, so the informant/complainant prayed before the police authorities to register a case.

On the basis of the aforesaid complaint, the police case was registered under Sections 341/323/325/364/506 IPC and the Investigating Authorities on conclusion of investigation submitted charge-sheet under the same Sections. The case was finally committed to the court of sessions and the learned trial court being the Additional Sessions Judge, Khatra, Bankura renumbered the case as S.T. 9(1) of 2015 and proceeded to frame charges under Sections 323/325/341/364/506 IPC.

The prosecution in order to prove its case relied upon 10 witnesses which included the complainant, neighbors/relations, the doctors who treated the informant/victim as also the Investigating Officer of the case.

The learned trial court on an assessment of the evidence of all the witnesses particularly the complainant and the other witnesses who led the foundational facts of the present case, disbelieved the factum which led to the framing of charges under Sections 325 and 364 of the Indian Penal Code. It has been categorically observed that “the prosecution has not been able to prove the charges under Sections 325 and 364 of the Indian Penal Code against the accused persons”. However, on an assessment of whole of the evidence, the learned trial court was pleased to hold the appellant guilty and convicted him for the charges under Sections 323/324/341/506 of the Indian Penal Code.

In order to assess the charges particularly which related to injuries affecting the person of the victim/informant, the medical document which was relied upon being Exhibit-3 was inspected by this Court and what is relevant in the medical report is allegation of physical assault and scratch marks. There are certain observations of the doctor PW-8 that the patient complained of pain also on the knees.

Having considered the nature of the injury, I am of the view that the offence under Section 324 of the Indian Penal Code has not been made out in this case. Accordingly, the appellant is acquitted of the charges under Section 324 of the Indian Penal Code. However, on the evidence so available, the findings so far as the charges under Sections 323/341/506 of the Indian Penal Code are concerned, the same are found to be just. As such, the order of conviction under the aforesaid sections being Sections 323/341/506 of the Indian Penal Code is affirmed. However, the sentence which has been imposed

in respect of the offences under Sections 323/341/506 of the Indian Penal Code being six months with fine and default sentence, also RI for one year with fine respectively is required to be interfered with, in the circumstances of the present case as the incident complained of is more than ten years.

Records reflect that the appellant was in custody from 08.01.2014 and he was granted bail on 05.02.2014. The trial court after holding the appellant guilty also allowed him to continue on bail which was affirmed by the High Court after the admission of appeal. There is no complaint against the appellant that he has misused his liberty either during the trial or during the pendency of the appeal.

Having considered the conduct of the present appellant and the time period which has lapsed in the meantime, I am of the view that no useful purpose would be served by directing the appellant to be sent behind the bar at this stage. Accordingly, so far as the sentence of imprisonment is concerned, the same is reduced to the period which has already been undergone. However, the fine which has been imposed under Sections 323/341/506 of the Indian Penal Code is cumulatively held to be a sum of Rs.25,000/- which would be deposited within a period of sixty days from the date of this order before the learned ACJM, Khatra, Bankura. The learned ACJM, Khatra would reimburse the said sum to the informant viz. Mangal Majhi.

In case the said amount is not deposited within the aforesaid period of sixty days, the appellant will serve default sentence of one month.

If the appellant is on bail, after payment of the fine amount, he must be discharged from the bail bonds.

With the aforesaid observations, the appeal being CRA 122 of 2019 is partly allowed.

Pending connected application is consequently disposed of.

Department is directed to send back the lower court records along with a copy of this judgment immediately to the learned trial court.

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

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

[Tirthankar Ghosh, J.]

subha/dc.