

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 695 of 2005

Nagendra Nath Barman & Ors.

-Vs-

The State of West Bengal &Anr.

For the Petitioners : Mr. Usuf Ali Dewan
Md. AshrafulHaque

For the State : Mr. Anwar Hossain
Ms. Manisha Sharma

Heard on : 03.01.2024, 21.02.2024, 08.03.2024, 14.06.2024

Judgment on : 20.09.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner against the judgment dated 18.02.2005 passed by the Additional Sessions Judge, Fast Track Court, Dinhata, Cooch-Behar in criminal appeal no.35/2002 upholding the judgment passed by the Learned Judicial Magistrate, 1st Class, Dinhata, Cooch-Behar in G.R. Case No. 94/82 and T.R. Case No. 94/84, corresponding to Dinhata P.S. Case No. 10/82 dated 10.03.1982 under Sections 147/342/323/326 of the Indian Penal Code.
2. The grievances of the petitioners are expressed as follows:-

One Tultuli Barman W/o- Joteram Barman, Village and Post-Office – Jarabari, Police Station – Dinhata, District – Coochbehar, on 10.03.1982 lodged a complaint at Dinhata Police Station inter alia stating at 04:30 a.m., she went to the field of Dipti Kabiraj to attend nature's call when the petitioners and other persons went to the field with stick, khari etc., and clamoured her to be thief. They assaulted her and took her to the house of Motilal Saha, where the accused persons tried her to a khuti and damaged her eyes by putting lime whereby she lost her eye-sight. After the arrival of a police van she was released from her captivity. She also stated that one Indra Mohan Barman was also brought to the house of Motilal Saha and he was also assaulted by the accused persons. She also stated that one Paresh Barman and Smt. Panchami Barman saw the incident.

3. On the basis of the aforesaid complaint Dinhata P.S. Case No. 10/82 dated 10.03.1982 was initiated against the petitioners under Sections 147/148/149/326/323 of the Indian Penal Code and thereafter the I.O. on completion of the investigation submitted charge-sheet under Section 148/149/326/323 of the Indian Penal Code.
4. Charges were framed against the accused under Sections 147/342/323 of the Indian Penal Code and a separate charge was framed against the accused petitioners namely (i) Naren Barman, (ii) Akshay Barman, (iii) Deben Barman and (iv) Anil Barman under Section 326 of the Indian Penal Code.
5. Learned Judicial Magistrate, 1st Class, Dinhata P.S. on 14.05.2002 pronounced the petitioners guilty under Section 342/147/323 of the Indian

Penal Code and sentenced them to suffer simple imprisonment for one month each and to pay a fine of Rs.500/- in default to further suffer simple imprisonment for 15 days under Section 342 of the Indian Penal Code, simple imprisonment for two months and fine of Rs.500/- each in default simple imprisonment for 15 days under Section 147 of the Indian Penal Code, simple imprisonment for one month and fine of Rs.500/- in default simple imprisonment for 15 days under Section 323 of the Indian Penal Code and also convicted accused petitioners no. 3, 5, 6 and 8 namely (i) Anil Barman (ii) Naren Barman (iii) Deben Barman and (iv) Akshay Barman under Section 326 of the Indian Penal Code and sentenced them to simple imprisonment for one year and also took pay of fine of Rs.2000/- only in default to suffer simple imprisonment for two months and all the sentences were to run concurrently.

6. Out of ten accused persons, two persons namely Harish Ch. Barman, S/o – Lt. Rabi Ch. Barman and Bipin Ch. Barman & Natu S/o – Lt. Satish Ch. Barman challenged the aforesaid judgment dated 14.05.2002 passed by the Ld. Judicial Magistrate, Dinhata, in Dinhata P.S. Case No. 10/82 dated 10.03.1982 bearing G.R. Case No. 94/82 and T.R. No. 94/84 also preferred a separate appeal in the Court of Sessions Judge, Cooch-Bihar which was registered as Criminal Appeal No. 33/2002.
7. Both the aforesaid appeals were finally decided by the Ld. Additional Sessions Judge, Fast Track Court, Dinhata, Cooch-Bihar on 18.02.2005 affirming the judgment dated 14.05.2002 passed by the Ld. Judicial

Magistrate, Dinhata and directed the petitioners to surrender before the Learned Trial Court to serve out the sentences.

8. According to the petitioners both the Learned Trial Courts erred in law and in fact and by convicting the accused petitioners for the alleged offences perpetrated upon a person other than Tultuli Barman for which no charge was framed.
9. The charges framed by the Learned Lower Court were baseless, improper and suffered from legal defects as the Learned Trial Court framed charges in respect of assault and wrongful confinement upon PW-1 Tultuli Barman but framed points for determination in respect of assault etc., upon Tultuli Barman, Mamata Barman and Indra Mohan Barman though there was no charge framed in respect of alleged assault, wrongful confinement etc., in respect of Mamata Barman and Indra Mohan Barman.
10. The vital discrepancies in prosecution evidence deposed by witnesses who were highly interested and self-contradictory statements should not have been relied upon.
11. The complainant contradicted her earlier statements made in the complaint on the vital point by furnishing the time of occurrence at about 04:30 a.m., and by stating in her examination in chief that after sunrise she went out to defecate on 10.03.82.
12. The de-facto complainant in her complaint claimed PW-2 and PW-3 were the eye witnesses of the occurrence being the close relatives of the complainant deposed their ignorance regarding the incident.

13. The husband of PW-1 was in his house at the time of occurrence but he did not go to the police station to inform the incident even after knowing the facts from her daughter Mamata Barman.
14. The village Panchayet, Mohan was present at the place of occurrence at the time of occurrence but he has not been examined by the prosecution before the Trial Court and as such the prosecution failed to perform its duty properly.
15. Accused Naren Barman, Akshay Barman, Anil Barman and Deben Barman, were convicted under Section 326 I.P.C. and sentenced them S.I. for 1 year each and fine of Rs.2000/- each in default S.I. for another 2(two) months. Accused Prafulla Barman, Anil Barman, MotilalSaha, Nagendra Nath Barman, Biswanath Barman, Naren Barman, Deben Barman, Akshay Barman, Bipin Barman and Harish Barman (10 persons) were convicted under Section 323 I.P.C. and sentenced them S.I. for 1 month and fine of Rs.500/- each in default 15 days further S.I. They were also convicted under Section 147 and sentenced them S.1. for 2(two) months and fine of Rs.200/- in default further S.I. for 15 days. Accused Dipti Kabiraj expired during trial.
16. The present petitioners filed appeal before the Ld. Sessions Judge, Coochbehar being Cr. Appeal No. 35 of 2002 which was dismissed on 18.02.2005 against which the instant revisional application had been filed.
17. Out of 8 petitioners in revisional application, the petitioners namely Nagendra Nath Barman (petitioner No.1), Prafulla Chandra Barman (petitioner No.4), Naren Chandra Barman (petitioner No. 5), Motilal Saha

(petitioner No.7) had expired during pendency of the instant revisional application and Akshay Barman (petitioner No.8) had been missing since long, which appeared from the police report.

18. The following petitioners were alive viz.:-

- a) Biswanath Barman, (petitioner No.2) convicted u/s 342 and sentenced him one month and to pay a fine of Rs. 500/- i.d. to suffer 15 days simple imprisonment. He was also convicted u/s 323 and sentenced him one month and to pay a fine of Rs.500/- in default to suffer simple imprisonment for 15 days. He was also convicted 147 and sentenced him for 2 months and to pay a fine of Rs.500/- in default to suffer 15 days simple imprisonment.
- b) Anil Chandra Barman, (petitioner No.3) convicted u/s 342 convicted u/s 342 and sentenced him one month and to pay a fine of Rs.500/- in default to suffer 15 days simple imprisonment. He was also convicted under Section 326 I.P.C. and sentenced for 1 year and to pay a fine of Rs.2000/- in default to suffer simple imprisonment for 2 months. He was also convicted u/s 323 and sentenced him one month and to pay a fine of Rs.500/- in default to suffer simple imprisonment for 15 days. He was also convicted 147 and sentenced him for 2 months and to pay a fine of Rs.500/- in default to suffer simple imprisonment for 15 days.
- c) Deben Barman, (petitioner No.6) convicted under Section 342 and sentenced him one month and to pay a fine of Rs.500/- in default

to suffer simple imprisonment for 15 days. He was also convicted under Section 323 and sentenced him one month and to pay a fine of Rs.500/- in default to suffer simple imprisonment for 15 days. He was also convicted 147 and sentenced him for 2 months and to pay a fine of Rs.500/- in default to suffer 15 days simple imprisonment.

19. There were 11 (eleven) witnesses as prosecution witness examined in the instant case including 1) Tultuli Barman, P.W.1, (complainant and injured), 2) Bharati Barman, P.W. 2, local/private witness, 3) Panchami Barman, P.W. 3, local/private witness. Both P.W. 2 and P.W.3 did not support the prosecution case.

20. The Learned Advocate for the petitioners submitted as follows:-

- i. PW-1, Tultuli Barman, complainant/injured, deposed *"I stated in the F.I.R. that Prafulla tied my daughter. I stated that Motilal assaulted her. I stated in the F.I.R. that Naren inserted needle into my eyes and Deben pressed by eye lids. I stated in the F.I.R that Deben has kept my eyes open."* PW-1 stated nothing against petitioner No. 2 and 3 in respect of damage of her eyes.
- ii. PW-4, Mamata Barman, daughter of PW-1, did not state that Deben (petitioner No. 6) assaulted her mother and herself. Gatu, Nagen, Shasthi, Prafulla, Anil and others assaulted her mother. Nagen ordered others to make her mother. In cross examination she stated *"I have heard the incident from my mother. Accused Akhshay damaged*

the eye of my mother. Dipti Kabiraj ordered Gatu to make the eyes of my mother blind.” She did not state petitioner No.2 Biswanath Barman, Petitioner No.3, Anil Chandra Barman and Petitioner No. 6 Deben Barman assaulted her mother. She had not been medically examined.

- iii. PW-5, Indra Mohan Barman, father of PW-6 namely Kabindra Nath Barman deposed *“One Moti instituted one theft case against me and Tultuli. I cannot say whether any other case is pending against me or not. Bharati Barman, P. W.2, is the “bhagna-bou” of Tultuli. The members of Panchayat were present at the time of incident”*. There was a dispute between Indra Mohan Barman and Paresh about the share of booty. PW-5 was assaulted by one Hari Barman. Thereafter Hari Barman assaulted him. As a result he sustained injury on his mouth.
- iv. PW-6, KabindraNath Barman, son of PW-5 deposed *“I have no personal knowledge about the incident. I cannot say how many cases are instituted by the persons of our locality in the name of paresh, Tultuli and my father. I cannot say whether Paresh has committed theft or not, but Tultuli commits small theft in the locality”*.
- v. PW-7, Dr. N.C. Pal, M.O. was attached to Dinhata Hospital. He treated Tultuli only one day. The patient was admitted by Dr. B.K. Dutta, PW-9, of the said hospital. Dr. B.K. Dutta treated the injured Tultuli Barman.
- vi. PW-8, Dr. T.B. Sarangi, attended the patient Indra Mohan Barman.

- vii. The initial Investigating Officer was not examined as a prosecution witness.
- viii. The Ld. Trial Judge, observed in the Judgement of the Revisional Application *“considering all the above discussed evidence, I find that the injury on the eyes of the PW-1, has been established by the prosecution. Further, I find no reason to disbelieve the active participation of the accused persons viz. Deben Barman, Naren Barman (already expired). Akshay Barman (missing since long), in the act of causing the PW-1 blind. I find no direct role played by the accused Anil Chandra Barman, (Petitioner No.3). Now, the only considerable contradiction is that who actually poured the lime or inserted the needle into the eyes of PW-1. The versions of PW-1 and PW-5 were contradicted to each other”*.
- ix. It appeared from the Judgement of the Trial Court of the revisional application, in that Dr. A.K. Maity prepared the medical document, is not examined by the Prosecution and thereby the medical reports prepared by Dr.Maity and his opinion cannot go in evidence. However, it appeared from the record the attendance of Dr. Maity could not be procured in spite of several summons issued by the Court and subsequently his report and signature were proved by PW-7, when the attendance could not be procured without an amount of delay.

21. Considered the submissions of the Learned Advocate for the petitioners as well as the State.
22. Both the Learned Trial Courts have assessed the evidence at length considering the evidence of the injured witness, the eye witness and the independent witnesses. The injury suffered by the injured witness resulting in the loss of her eye sight corroborated with the medical report. The evidence of the injured witness corroborated by the medical evidence as opined by both the Learned Trial Courts convicting the petitioners should not be interfered with.
23. Considering the lapse of 42 years from the date of the incident giving rise to inordinate delay the sentence is modified to the extent of incarceration underwent by the petitioners namely Biswanath Barman, Anil Chandra Barman and Deben Barman who are alive with regard to the conviction under Sections 147/342/323/326 of the Indian Penal Code.
24. The instant revisional application has become infructuous against the petitioners who have expired as aforesaid.
25. In view of the above discussions, the instant criminal revisional application being CRR 695 of 2005 is dismissed.
26. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
27. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)

