

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 926 of 2020

Rejak Sk. & Rajjak Sk. & Anr.

Vs

The State of West Bengal.

For the Petitioners : Mr. Prabir Majumder.

For the State : Ms. Rita Datta.

Hearing concluded on : 25.01.2024

Judgment on : 21.02.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against a judgment and order of conviction dated 06.02.2020 passed by the Learned Sessions Judge, Nadia in Criminal Appeal No. 29 of 2017, affirming the order dated 02.11.2017 of conviction and sentence of the petitioners passed by the Learned Judicial Magistrate, 3rd Court, Krishnagar, Nadia in G.R. Case no. 358/1997, arising out of Dhubulia Police Station Case No. 32/1997, dated 21.03.1997 under Sections 325/326/34 of the Indian Penal Code, convicting the petitioner no. 1 under Sections 326 of the Indian Penal Code, and petitioner nos. 2 and 3 under Section 323 of the Indian Penal Code and sentencing the Petitioner no. 1 to suffer rigorous imprisonment for one year and to pay a fine of Rupees 10,000/- (Ten Thousand) in default to undergo rigorous imprisonment for one month, for the offence punishable under Section 326 of the Indian Penal Code. And the petitioner nos. 2 and 3 were sentenced to suffer rigorous imprisonment for one month each and to pay a fine of rupees 1,000/- (One Thousand) each, in default to suffer imprisonment for fifteen days for the offence punishable under Section 323 of the Indian Penal Code.

FACTS:-

2. The prosecution case in short is as follows:-

- i) *That on 19.03.1997 at around 9 pm the younger brother of the informant namely Kutubuddin Sk went to relieve himself by the side of the road. At that time Rajek Sk, Rafik Gayen and Siraj Sk, in conspiracy with one another attacked the*

informant's brother with sharp cutting weapon. Rajek Sk assaulted his brother on his head with a 'ramda'. Rafik Gayen assaulted the informant's brother on his hand with an iron sabal. Siraj Sk assaulted the informant's brother with a stick. On hearing his brother's cry for help, the residents of the nearby houses came running and rescued him, and then shifted him to Dhubulia Hospital in bleeding condition, wherefrom he was referred to Shaktinagar Hospital, Krishnagar for better treatment.

On the basis of a written complaint a case being Dhubulia Police Station Case No. 32/1997, dated 21.03.1997 under Sections 325/326/34 of the Indian Penal Code was started.

- ii) The accused persons were placed on trial in connection with Dhubulia Police Station Case No. 32/1997, dated 21.03.1997 under Sections 325/326/34 of the Indian Penal Code, corresponding to G.R. Case no. 358/1997 to answer charges under Sections 325/326/34 of the Indian Penal Code. The prosecution had examined six witnesses, and some documents were marked as exhibits during the said trial such as: Medical Documents, Rough Sketch map with index, charge sheet, formal FIR, etc.*

- 3.** By a judgment dated 02.11.2017 passed by the Learned Judicial Magistrate, 3rd Court, Krishnagar, Nadia, in G.R. Case no. 358/1997, arising out of Dhubulia Police Station Case No. 32/1997, dated 21.03.1997 under Sections 325/326/34 of the Indian Penal Code, the petitioners were convicted and sentenced. An appeal was preferred before the Learned District and Sessions Judge, Nadia at Krishnagar, and the same was registered as Criminal Appeal No. 29 of 2017.
- 4.** By the judgment and order under revision dated 06.02.2020 in Criminal Appeal No. 29/2012, the Learned Sessions Judge, Nadia has been pleased to affirm the order of conviction and sentence of the petitioners passed by the Learned Judicial Magistrate, 3rd Court,

Krishnagar, Nadia, in G.R. Case no. 358/1997, arising out of Dhubulia Police Station Case No. 32/1997, dated 21.03.1997 under Sections 325/326/34 of the Indian Penal Code vide a judgment dated 02.11.2017.

5. Hence the revision, on the following grounds on the basis of the findings of the Appellate Court:-

- i) That the prosecution had failed to fix the place of alleged incident beyond all reasonable doubt. PW1 Sukchand Sk de facto complainant and PW2 Kutubuddin Sk have given different versions regarding the alleged place of occurrence, while investigating officer PW6 Balaram Sarkar mentioned another place regarding the alleged place of incident.
- ii) That the prosecution has also failed to prove the time of alleged occurrence.
- iii) That the doctor who attended the patient (PW5 Dr. Debasish Das) stated in his evidence that he examined the patient on 20.03.1997 whereas PW1 Sukchand Sk had deposed that the alleged incident took place in the night on 21.03.1997.
- iv) That the medical documents were silent about how the injured received injury and also who actually was the assailant.
- v) That the prosecution has failed to prove the nature of injury by producing the injury report because the age of injury was also not mentioned in the injury report.

- vi) That in spite of having the opportunity to examine the independent witnesses who were available at the alleged place of incident, prosecution only chose to examine the interested witnesses.
- vii) That the First Information Report of the instant case was not proved beyond reasonable doubt.
- viii) That while dealing with the instant case the Learned Trial Judge as well as the Learned Appellate Court overlooked the mandatory provisions of Section 360 and 361 of the Code of Criminal Procedure.
- ix) That the place of occurrence is doubtful.
- x) That the date of examination by the doctor is disputed.
- xi) That the nature of injury allegedly not noted in the medical report.
- xii) That the Courts failed to consider the provision under Sections 360 and 361 of the Cr.P.C. to the convicts.

ANALYSIS OF EVIDENCE:-

- 6. FIR** states the petitioner no.1 assaulted the Complainant's brother on his head with a 'Ramda' (a sharp cutting weapon).
- 7.** Petitioner no. 2 (now deceased) assaulted the victim with 'Sabal'.
- 8.** Petitioner no. 3 assaulted the victim with 'lathi', when the victim fell down after being assaulted with 'Ramda' & 'Sabal'.

9. **Delay** of two days in filing the complaint has been attributed to the treatment of the victim.
10. **Defence** is of a dispute relating to a matrimonial dispute between the two families.
11. **The victim** – is a witness (P.W.2) in this case.
12. **PW1** - the complainant is an eyewitness and a cousin of one of the accuseds. The incident allegedly occurred when the victim went to bring the wife of one of the brothers of the accused as the wife did not want to stay with her husband.
13. **PW 2** – The victim has stated that he was assaulted, when he was returning to his house after relieving himself. This witness has denied the defence case.
14. **PW 3** – is also an eyewitness who saw the incident of assault. As he raised hue & cry, the accuseds fled away.
15. **PW 4 & 5** – are the Doctors who treated the victim. Injury report is exhibit 3 in this case. Ext-2, the discharge certificate of the victim shows he was **admitted in Nadia District Hospital from 20.03.1997 to 26.03.1997 for head injury**. Ext-3 Injury report shows the following injuries:-
 - i. ***One sharp cut injury of 3 inch size over right side of scalp.***
 - ii. ***Muscles and vessels are grossly injured.***
 - iii. ***Cranium (skull bone) injury (+).***
 - iv. ***Brain matter could be seen from exterior.***

v. ***Nature of injury serious.***

vi. ***Pt was referred to Nadia District Hospital for further evaluation and management.***

FINDINGS:-

16. The nature of injuries clearly corroborated the statements in the written complaint. There is no discrepancies in the evidence adduced by the witnesses including the victim and the doctors who treated him. The prosecution has clearly proved the case against the petitioners beyond all reasonable doubt.

17. The petitioners were convicted and sentenced, as follows:-

GR Case No. 358 of 1997

*“.....Convict **Rejak Sk** is sentenced u/s 248(2) Cr.P.C. to suffer **rigorous imprisonment for one year** and fine of **Rs. 10,000/-** in default to undergo **rigorous imprisonment for One month.***

*Convict namely **Siraj Sk** is sentenced to suffer **rigorous imprisonment for one month** and **fine of Rs. 1,000/- each**, in default to suffer further imprisonment for fifteen days.....”*

**Sd/
Judicial Magistrate, 3rd Court,
Krishnagar, Nadia**

18. During the pendency of this revision the convict/petitioner no. 2, Rafique Gain @ Rafik Gain died.

CONCLUSION:-

19. Considering the minimum sentence imposed upon the convicts in a case of such nature and evidence, interference by this Court will clearly be an abuse of the process of law.

20. CRR 926 of 2020 is dismissed.

21. The judgment and order of conviction dated 06.02.2020 passed by the Learned Sessions Judge, Nadia in Criminal Appeal No. 29 of 2017, affirming the order of conviction and sentence of the petitioner dated 02.11.2017 passed by the Learned Judicial Magistrate, 3rd Court, Krishnagar, Nadia in G.R. Case no. 358/1997, arising out of Dhubulia Police Station Case No. 32/1997, dated 21.03.1997 under Sections 325/326/34 of the Indian Penal Code, convicting the petitioner no. 1 under Sections 326 of the Indian Penal Code, and petitioner nos. 2 and 3 under Section 323 of the Indian Penal Code and sentencing the Petitioner no. 1 to suffer rigorous imprisonment for one year and to pay a fine of Rupees 10,000/- (Ten Thousand) in default to undergo rigorous imprisonment for one month for the offence punishable under Section 326 of the Indian Penal Code. And the petitioner nos. 2 and 3 to suffer rigorous imprisonment for one month and to pay a fine of rupees 1,000/- (One Thousand) each, in default for further imprisonment for fifteen days for the offence punishable under Section 323 of the Indian Penal Code, **is hereby affirmed.**

- 22. Petitioners are directed to surrender before the trial court with 15 days from the date of this order in default the trial court shall proceed in accordance with law.**
- 23.** All connected applications, if any, stand disposed of.
- 24.** Interim order, if any, stands vacated.
- 25.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 26.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)