

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.A. 240 of 2009
Pappu Roy
-Vs-
The State of West Bengal**

For the Appellant : Ms. Devipriya Mitra
Mr. Dhiman Roy

For the State : Ms. Faria Hossain
Mr. Anand Keshari

Heard on : 01.02.2024, 21.02.2024

Judgment on : 18.07.2024

Ananya Bandyopadhyay, J. :-

1. This criminal appeal is preferred against the judgment and order of conviction dated 18th March, 2009 passed by the Learned Additional Sessions Judge, Fast Track Court, 1st Court, Baruipur, District- South 24 – Parganas in Sessions Trial No. 1(2)06 arising out of Sessions Case No. 91(4)04 convicting the appellant for the offence punishable under Section 323 of the Indian Penal Code and sentencing him to suffer simple imprisonment for six months and to pay a fine of Rs.1,000/- in default, he shall suffer further simple imprisonment of two months.
2. The prosecution case precisely stated one Smt. Jyotsna Debnath, wife of Parimal Debnath of village- Arabinda Pally, Police Station – Canning, District – South 24 – Parganas lodged a written complaint, inter alia, alleging that on 28.02.2002 at about 9.45 hours when she accompanied by her husband were returning home after closing the grocery shop, a

young person with the help of Smt. Bijali Roy and Netai Roy assaulted her husband a 'bhojali' from the left side on the head of her husband at the junction of P.W.D. Road and Arabinda Pally who sustained bleeding injury and collapsed. She informed the incident to the Canning Police Station and the husband of the de-facto complainant was admitted at Canning Rural Hospital. The accused persons snatched Rs.3,000/- from the husband of the complainant.

3. On the basis of the said written complaint, Canning Police Station Case No. 25 of 2002 dated 28.02.2002 was registered under Sections 326/ 307/ 379/ 120B of the Indian Penal Code against the appellant and others and an investigation ensued.
4. On completion of the investigation, charge-sheet was submitted against the appellant and others under Sections 379/ 307/ 120B of the Indian Penal Code.
5. Charge was framed under Section 307/120B of the Indian Penal Code against the appellant and others to which they pleaded not guilty and claimed to be tried.
6. In order to prove its case the prosecution examined 14 witnesses and exhibited certain documents.
7. A circumspection of evidence of the prosecution witnesses reveals as follows:-
 - i. PW-1 the de facto complainant recounted in her evidence the narrative of the complaint specifying Pappu, Arun and Bijoli to have assaulted her husband, the victim with 'bhojali' with both sides of his belly. The face of Pappu and Arun were

covered while that of Bijoli was uncovered. The husband of PW-1 was also assaulted with a rod by the accused Arun on his head. The commotion called for the assemblage of the neighbours of the village at the place of occurrence.

- ii. PW-1 in cross-examination stated the incident of assault to have continued for 15-20 minutes. She failed to rescue her husband from the grasp of the accused persons. Neither any police official nor any other person of the neighbourhood “pally” appeared at the place of occurrence. She named Mrinal Kanti Sarkar, Kalu Mondal, her brother Bablu Mondal and Asim Mondal, her brother-in-law to have accompanied her to Canning Hospital. PW-1 had been the employee of Canning Rural Hospital for 21 years. The victim was attended by doctor Asish Tandon at the hospital. PW-1 did not mention the name of the present appellant Pappu Roy in the complaint.
- iii. PW-1 further stated the accused Bijoli Roy to be a poor lady being the wife of a van puller. PW-1 stated to have a good relationship with the doctor of Cannig Rural Hospital as aforesaid. The blood stained wearing apparels of the victim and that of PW-1 was not produced before the Court.
- iv. PW-2 was the scribe of the complaint devoid of personal knowledge of the incident.

- v. PW-3 a neighbour of the victim stated to have heard a commotion whereby she came out of her house and could not find anybody visible.
- vi. PW-4 was declared hostile by the prosecution on his denial of knowledge of the incident.
- vii. PW-5 a neighbour of the victim exited from his house on a commotion and found the victim Parimal Debnath standing in front of his house who stated that the accused fled after assaulting him. The victim however did not mention the names of the presence who assaulted him. PW-5 was not interrogated by the police. PW-5 further did not state the presence of PW-1 along with victim Parimal Debnath at the place of occurrence.
- viii. PW-6 the brother-in-law of the victim recounted to have reached the place of occurrence having heard the clamour and witnessed the victim with body drenched blood. PW-1 and PW-6 lifted the victim to the Canning Rural Hospital. PW-6 had been a post-occurrence witness who heard that the present appellant and one Bijoli assaulted the victim. PW-6 was not interrogated by the police.
- ix. PW-7 denied to have known the person who assaulted Parimal Debnath. PW-7 too reached the place of occurrence after the incident of assault was over and the accused persons fled. However, he stated to have seen the accused Bijoli Roy to

escape with a torch in her hand. PW-7 was not interrogated by the police. PW-7 recounted to be angry with Bijoli Roy.

- x. PW-8 the brother of the victim reiterated the evidence of other prosecution witnesses with regard to the place of occurrence and to have witnessed his brother with bleeding injury and accompanied him to Canning Police Station by a trolley van. He further stated his ignorance of the reason why his elder brother was assaulted by the accused persons. PW-8 was interrogated by the police. However, he did not mention the name of the appellant and Arun Roy to be the assailants to the police.
- xi. PW-9 another brother of the victim had seen the scuffle wherein a man was being assaulted by certain persons. He subsequently witnessed the present appellant and Arun Halder to pass by him who refused to answer on his enquiry concerning the scuffle. Thereafter, he witnessed the victim sustaining bleeding injury on his body. PW-9 along with Asim Patra and others had taken the victim to the Police Station and thereafter to the hospital.
- xii. During his cross-examination PW-9 refuted his earlier contention of transmitting the victim to the hospital by himself. PW-9 was not interrogated by the police.
- xiii. PW-10 recounted that the accused Pappu Roy and Arun arrived at his house on the fateful night and asked for wine with blood marks on their wearing apparels confessing to have

stabbed the victim Parimal Debnath. PW-10 further deposed to have informed the incident to the second police officer of the Canning Police Station.

xiv. PW-11 the victim, inter alia, deposed as follows:

“The incident took place on 28.2.02 at about 9.45 p.m. My wife and myself closed out grocery shop and thereafter we were returning home. A marriage ceremony was being celebrated in a house at our para Arabinda pally. The eyes of my wife were towards the marriage ceremony. But, I started proceeding and went a little while. I saw that a person was standing wrapping a muffler on his face. The person was standing at the back side of the house of Ashim Patra. While I tried to cross over the person then the person stabbed me with a bhojali on the right side of my body. Then the accused Pappu Roy after coming out from some trees under darkness started assaulting me on my shoulder and differing parts of body with an iron rod. The person wrapping his face with muffler was Arun Haldar. Arun stabbed me with Bhojali. Arun stabbed me on my head for four times. Then the accused Bijali Roy tried to separate my wife from me.

My wife and myself raised hue and cry. After hearing our alarm Ashim Patra and some invitees of the marriage ceremony came to the P.O. Thereafter, the accused persons fled away from the scene of occurrence”.

xv. PW-12 doctor Asish Tandon detected the following injuries:

“1. There were multiple sharp cutting injuries on scalp.

1(a). Right frontal region measuring 3” x ½”- four stitches given.

1(b). Right parietal region 3” x ½”- four stitches given.

1(c). Left parietal region 2” x ½”- three stitches given.”

xvi. PW-12 further stated as follows:

“Besides the above injuries, there was also abrasion over right middle finger, right ring finger, right lower anterior chest wall, laterally – 5”x1” cm., abrasion over left chest wall anteriorly, at laterally measuring 3”x1” cm. The patient was conscious and gave statement to me. The patient stated to me that he was assaulted at 10:15 p.m. on 28.02.02 at road at Arabinda Pally. The patient did not know exactly who assaulted him but he watched female Bijali along with two male persons. The patient was attacked with Bhojali and iron rod. The patient was having some personal rivalry with the female Bijali Roy since a few days.”

xvii. During his cross-examination PW-12 stated as follows:

“There is prescribed form in Government hospital for preparation of injury report. Then says there was dearth of form of injury report in our hospital.

I am acquainted with the hand writing of the injury report. This injury report is not reproduced in any prescribed form of injury report.

After the word iron rod it is written illegible.

If any patient is admitted to our hospital a bed head ticket of our hospital is prepared.

No bed head ticket has been shown to me today.

I am attached to hospital as a medical officer for more than 10 years.

I examined a number of patients during my tenure as a medical officer.

It is not possible for me to say the case history of each of the patients whom I examined and treated.

There is no mention of lacerated injury in the injury report.

It is not necessary that a patient will sustain lacerated injury if he is assaulted with iron rod. It is not mentioned in the injury report which injury the patient sustained due to assault inflicted upon him with iron rod.

If any person is assaulted with iron rod with strong force he will not sustain the injuries as noted in the injury report.

The depth of injury is not noted in the injury report.

It is not mentioned in the injury report whether the injuries were bleeding or not. The age of the injuries is also not noted in the injury report.”

- xviii. PW-13 received the complaint from PW-1 and identified the formal FIR marked as Exhibit 3. PW-13 mentioned that the name of the present appellant to be a suspect was not mentioned in the formal FIR.

xix. PW-14 on completion of investigation submitted charge-sheet.

PW-14 did not seize the wearing apparels of the victim.

8. PW-14 the Investigating Officer did not seize the wearing apparels of the victim as well as PW-1 who claimed of her wearing apparels to be stained with blood. The offending weapon was not seized. PW-12 the doctor who issued the injury report stated the victim to have been admitted in the hospital. The prosecution did not place any bed head ticket on record to endorse the hospitalization of the victim. PW-12 further stated that the injury report did not mention any lacerated injury. The injuries depicted in the injury report did not mention its depth or as to whether the same could have been caused through an assault by an iron rod. Moreover, PW-12 stated that his signature in the injury report was written by somebody else and the same was not written by him. He further stated to have been acquainted with the handwriting in the injury report which was not produced in the prescribed form prevalent for usage in Government hospitals. The veracity of the injury report is flawed and not beyond suspicion.
9. PW-1 the wife of the victim had been an employee of the hospital in which the victim was admitted and in the peculiarity of circumstances, the injury report was prepared in deviation of the prescribed format in the Government hospitals for the purpose of issuing the same. PW-12 neither wrote the injury report nor signed the same which mentioned his name as an attending doctor. The hospitalization of the victim was not proved. The injury report did not mention the names of the person who had accompanied the victim to the hospital. The blood stained

wearing apparels of the patient was not preserved by the hospital to be produced for examination. There was every possibility of the injury report to have been fabricated in collusion between PW-1 and PW-12 who had maintained a good relationship being a staff of the hospital. PW-12 further stated that the victim failed to reveal the name of the person who assaulted him and was ignorant of the identity of two male persons who were present along with the female accused Bijali Roy.

10. An instance of rivalry with the accused Bijali Roy was disclosed to PW-12 by PW-11, the victim. PW-11 in his deposition stated to have witnessed a person present with a muffler wrapped on his face behind the house of Ashim Patra. On his way across the said person stabbed him with a 'bhojali' on the right side of his body. The said person was identified to be Arun Halder who stabbed on his head for 4 to 5 times. Instantly the present appellant Pappu Roy advanced through a clump of trees in the dark night and assaulted him on the shoulder and different parts of his body with an iron rod. The identity of the appellant in darkness, the face being covered with the muffler invariably must have been beyond detection and visibility.
11. If the purported injury report was taken into consideration the evidence of PW-11 with regard to the overt act of the present appellant was unbelievable since PW-11 did not sustain any injury on his shoulder with an iron rod which evidently would have left an impact on the body of the victim through its forceful application. PW-11 immediately after the incident could not reveal the identity and the overt act of the male assailants before the doctor, i.e. PW-12, however before the Court

during his examination vividly described the action on the part of the appellant as well as the co-accused Arun Halder. Indubitably there had been exaggeration and embellishments on the part of PW-11 to implicate the present appellant as an afterthought. The Investigating Officer did not seize either of the offending weapon, i.e. the 'bhojali' or the iron rod. The presence of the present appellant at the place of occurrence is shrouded with mystery. The extra judicial confession by the appellant and the co-accused before PW-10 to have confessed of stabbing the victim is inadmissible in evidence. PW-11 did not reveal the names of the miscreants to PW-5 his neighbour as well as PW-6, PW-7, PW-8 and PW-9. Admittedly, the victim had a rivalry or enmity with the accused Bijali Roy. The inconsistencies in the evidence of PW-1 and PW-11, the variations with regard to the nature of injury and its cause thereof with the controversial medical evidence placed before the Court with distinct and explicit ambiguities discredited the evidence of the prosecution witnesses.

12. The evidence of the victim and the eye witnesses is considered to be trustworthy if the same is not indented with self-interest, self-gratification, embellishments, intent of false implication, vindictive and revengetic in nature.
13. In the instant case, based on mere suspicion and a failure to establish circumstantial evidence, the mens rea or guilty motive or criminal intent on the part of the appellant could not be established.

14. In view of the above discussions, the prosecution has failed to establish its case beyond reasonable doubt and accordingly, the instant criminal appeal being CRA 240 of 2009 is disposed of.
15. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
16. 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.)