

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 302 of 2019

Satya Smaran Adhikary

Vs

The State of West Bengal & Anr.

For the Appellant : Mr. Tapan Dutta Gupta,
Mr. Parvej Anam.

For the Respondent No.2 : Mr. Dipta Dipak Banerjee.

For the State : Mr. Pratick Bose.

Hearing concluded on : 22.03.2024

Judgment on : 29.04.2024

Shampa Dutt (Paul), J.:**The Appeal:-**

1. The appeal has been preferred against a Judgment and an order dated 10.08.2018 passed by the Learned Metropolitan Magistrate, 15th Court, Calcutta acquitting the Respondent No.2 in connection with G.R. 1616 of 2008/T.R. No. 217 of 2010 from the Charge under Section 324 of the Indian Penal Code.
2. The Appellant's case is that on the basis of a First Information Report lodged by the appellant abovenamed, a case being Shyampukur Police Station Case No. 236 of 2008 dated 15.10.2008 under Sections 341/324 of the Indian Penal Code had been initiated against the Respondent No. 2.
3. The Investigating Agency upon completion of investigation submitted Charge Sheet against the accused person, the Respondent No.2 and after the usual formalities Charge was framed under Section 324 of the Indian Penal Code against him.
4. Out of four witnesses as shown in the Charge Sheet, the prosecution could examine only two witnesses since the Learned Magistrate was pleased to close the evidence of the prosecution by an order dated 02.04.2018.

The Prosecution:-

5. The prosecution case, in a nut shell, is that:-

On 15.10.2008 at about 8 in the morning the accused person assaulted the complainant with a blunt object as a result, he sustained bleeding injury. He was treated by doctor.

6. **On completion of trial the accused/opposite party no.2 was acquitted of the said charge.**

7. The Appellant/Complainant states that the trial Court failed to properly consider the materials on record and thereby acquitted the accused, causing grave injustice.

Evidence on record:-

8. P.W.1 is the Complainant and is a Doctor by profession who has alleged assault by the accused.

9. During trial, the Complainant produced a photocopy of a medical certificate which was marked 'X' for identification. This witness has **admitted that a property dispute (tenancy dispute) exists between the two families.**

10. **He has further admitted that he, his mother and his wife have filed four cases against the accused/opposite party no. 2 in this case. There is also a probate case pending.**

11. P.W.2 is the recording officer.

12. No other witnesses were examined.

13. The photocopy of the medical certificate produced by the complainant, marked 'X' for identification has not been proved.
14. It is the case of the Appellant that the trial Court did not exhaust the process of serving summons upon the witnesses as per procedure and wrongly closed the evidence causing prejudice to the complainant.
15. It appears from the order sheet of the trial Court that P.W.2 was examined on 03.03.2018. On that day summons was issued in respect of charge sheet witness no.3. On the next date (02.04.2018), no witness was present.
16. From the materials on record, the Court found that C.S.W. Nos. **2 & 3 are not found.**
17. Thus on the said materials on record the Court closed the evidence.
18. Both the Appellant and the respondent no.2/accused have filed their written notes of arguments.
19. The appellant has stressed upon the finding of the trial Judge to the effect that injury report was marked as Exhibit 3 (on consent).
20. From the materials on record it is clear that the said finding is not in accordance with the evidence on record and it appears to have been erroneously recorded.
21. There is only one photocopy of a medical report produced by the complainant during trial and marked 'X' for identification by the Court, but not proved.

22. The following Judgments have been relied upon by the Appellant:-

- i) *Bablu Kumar & Ors. vs State of Bihar & Anr., (2015) 3 C Cr LR (SC) 729, decided on July 20, 2015.*
- ii) *Dakshin Dinajpur Zilla Parishad vs State of West Bengal & Anr., (2007) 2 C Cr LR (Cal) 660, decided on August 16, 2007.*

23. The present case was initiated in the year 2008. The Judgment was passed in 2018.

24. It appears that the charge sheet has mentioned four witnesses in all including the Complainant (P.W. 1 & C.S.W. 1) and the Investigating Officer (P.W. 2, C.S.W. 4). C.S.W. 2 & 3 were not found as per report.

25. Both are not formal witnesses.

26. No Doctors have been cited as witness in the Charge Sheet.

27. In *Harvinder Singh @ Bachhu vs The State of Himachal Pradesh, in Criminal Appeal Nos. 266-267 of 2015, decided on 13 October, 2023*, the Supreme Court held:-

“24. Failure on the part of the prosecution in not examining a witness, though material, by itself would not vitiate the trial. However, when facts are so glaring and with the witnesses available, particularly when they are likely to give a different story, the Court shall take adequate note of it. When a circumstance has been brought to the notice of the Court by the defense and the Court is convinced that a prosecution witness has been deliberately withheld, as it in all probability would destroy its version, it has to take adverse notice. Anything contrary to such an approach would be an affront to the concept of fair play. In *Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145,*

*“19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. **On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced.** The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses...”*

(emphasis supplied)”

- 28.** In the present appeal, the prima facie evidence (oral, as there is no documentary evidence) is not strong enough to prove the case against the respondent no. 2 beyond reasonable doubt.
- 29.** The reasons recorded by the trial Judge appear to be in accordance with law and thus the Judgment & Order under appeal requires no interference.

30. CRA 302 of 2019 is dismissed.

31. All connected applications, if any, stand disposed of.

32. Interim order, if any, stands vacated.

33. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

34. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)