

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 312 of 2019

***Saidul Sk. @ Babu and others
versus
The State of West Bengal & Anr.***

For the Appellants : Mr. Usuf Ali Dewan,
Mr. Asif Dewan.

For the State : Mr. Debasish Roy, Ld. P.P.,
Ms. Sreyashee Biswas.

Heard On : 12.08.2024 & 19.08.2024.

Judgement On : 19-08-2024.

Tirthankar Ghosh, J. :

At the inception, learned advocate for the State, submits a report which was directed to be submitted before this court for ascertaining the genuinity of the death certificate in respect of the appellant/Nektar Sk. The officer-in-charge of Bhagwangola P.S., Murshidabad, has, on an enquiry, affirmed that the appellant has expired on 27th of March, 2021. To that effect, a report has been submitted. Let the same be kept with the record.

Accordingly, as submitted earlier, learned advocate for the appellant no.3 i.e., Nektar Sk. do not intend to proceed with the appeal, as the same is abated on the death of the appellant. As such, the appeal is proceeded against Saidul Sk. (appellant no.1), Mithun Sk. (appellant no.2), Rejaul Sk. (appellant no.4) and Tanjura Bibi (appellant no.5).

The present appeal has been preferred against the Judgment and Order of conviction and sentence dated 16.04.2019 and 17.04.2019 passed by the learned Additional Sessions Judge, First Fast Track Court, Lalbagh, Murshidabad in Sessions Trial No. 10 (March), 2016 arising out of Sessions Serial Case No. 09 of 2016, wherein the learned trial court was pleased to hold the appellants guilty and sentenced them as follows:

- i) For the offence under Section 448/34 of the IPC – Saidul Sk., Mithun Sk., Nektar Sk, Rejaul Sk and Tanjura Bibi are sentenced to suffer simple imprisonment for three (03) months;
- ii) For the offence under Section 325/34 of the IPC – Saidul Sk. and Tanjura Bibi are sentenced to suffer R.I. for five (05) years and fine of Rs.10,000/- i.d., R.I. for six months;
- iii) For the offence under Section 325/34 of the IPC – Mithun Sk., Nektar Sk. and Rejaul Sk are sentenced to S.I. for six months.

Bhagwangola P.S. Case No. 359 of 2013 dated 10.10.2013 was registered for investigation on the basis of a complaint submitted by Sobur Ali against Saidul Sk., Mithun Sk., Nektar Sk., Rejaul Sk. and Tanjura Bibi under

Sections 448/325/326/307 of the IPC. The allegations made in the written complaint addressed to the Officer-in-charge, Bhagwangola Police Station were to the effect that the complainant's son (aged about 14 years) was sitting at a tea stall of the locality near his house, when Mithun Sk started an altercation with him. Thereafter, Mithun Sk assaulted his son by inflicting fists and blows and also abused and threatened him. Complainant's son returned home and complained to his wife regarding the incident, when his wife, Amina Bibi went and asked the accused regarding the assault being inflicted on his son, when the accused along with others entered into a verbal altercation with his wife. Sensing trouble his wife returned home. Then the accused persons being armed with bamboo, *henso* and brick bats entered their house encircled and physically attacked her. The accused persons were assaulting her with fists and blows and also with bamboo stick when accused Saidul Sk., all of a sudden, with a brick bat struck at her right eye causing serious bleeding injury over her right eye and nose. At that time, Mithun Sk. with *henso* aimed at the neck of Amina Bibi but fortunately she escaped from being inflicted and raised alarm when local people rushed at the place of occurrence and the accused persons ran away threatening to murder her. The complainant's wife Amina Bibi was taken to Kanapukur Hospital from where she was referred to Lalbagh S.D. Hospital, wherefrom she was referred to Berhampore Hospital and finally she was shifted to NRS Medical College and Hospital, Kolkata. The complainant stated that his wife/Amina Bibi was under treatment and was also in a critical condition, as such there was delay in lodging the complainant.

He requested the police authorities to take necessary steps against the accused persons.

On the basis of the aforesaid letter of complaint the present case was registered with Bhagwangola P.S. and the same was endorsed by the officer-in-charge of the said police station to Sub-Inspector Bibekanand Mondal (P.W.-9) for investigation, who visited the P.O., prepared rough sketch map with index, examined available witnesses and recorded their statements, collected the injury reports of Amina Bibi and also tagged the other case being Bhagwangola P.S. Case No. 379 of 2013, which was registered over the self-same incident. Thereafter, charge-sheet was submitted before the learned jurisdictional court. The case was thereafter committed to the Court of Sessions and finally, the proceedings along with the records were transmitted to the learned Addl. Sessions Judge, First Track Court-I, Lalbagh. The learned Trial Court by an order dated 30.03.2016 was pleased to frame charges against all the five accused persons under Sections 448/34, 326/34, 307/34 of the IPC. The contents of the charges were read over to the accused persons to which they pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon nine witnesses which included PW-1, Sobur Ali, the complainant; PW-2, Tarjina Bibi, daughter of the complainant(PW-1) and the injured(PW-4); PW-3, Majrul Sk., neighbor of the complainant; PW-4, the injured Amina Bibi; PW-5, Kabirul Islam, Medical Officer of Kanapukur BPHC; PW-6, Laltus Bibi, co-villager; PW-

7, Asiruddin Miya, ASI of Police who filled up the formal FIR and registered the case as per direction of the Officer-in-Charge; PW-8, Dr. Anil Kumar Ghanta, doctor who examined the injured, Amina Bibi on 24-09-2013 at NRS Medical College and Hospital; PW-9, Investigating Officer of the case.

PW-1, Sobur Ali deposed before the court that an incident occurred at a tea stall of Mundur Sk., which is situated about $\frac{1}{2}$ km away from his house with his son Sk. Samim Sk where he was assaulted by Mithun Sk. Being assaulted by Mithun Sk. complainant's son returned home and informed him as to how he was assaulted with fists and blows. On receipt of such information, the complainant along with his wife and son had been to the tea stall and noticed that Mithun Sk. was still there in the tea stall along with Saidul, Neksad and Joshed. The complainant enquired from Mithun Sk. when Joshed briefed him and stated that Mithun without any cause assaulted his son, Samim Sk. The complainant scolded Mithun for his misdeed when an altercation took place between him and Mithun, thereafter he along with his wife and son left the tea stall. On their way, Mithun along with others encircled/surrounded them and joined in an altercation when Nektar Sk., grandfather of Mithun Sk. threatened them of dire consequences. On being threatened, the complainant along with his wife and son returned to their house and took shelter. However, the accused persons attacked their house when Saidul Sk. directed his associates to bring the complainant out from his house when they were restrained by his wife from entering the house and as a result the accused persons assaulted his wife. During such assault, the

accused Tanjura Bibi caught hold of his wife when Saidul assaulted his wife with a chunk of brick, Mithun also helped them to assault his wife and then they fled away. Being assaulted, his wife fell down, receiving injury on her person and seeing such incident many co-villagers rushed at the place of occurrence. The complainant made arrangement to take his wife for treatment but first she was taken to Bhagwangola PS, however seeing her condition the police authorities advised them to first go to Kanapukur hospital where the doctor on seeing the condition of his wife particularly the gravity of her injury referred his wife to Lalbagh SD hospital for better treatment. However, the doctor of Lalbagh SD hospital advised them to take her to Berhampore hospital but the hospital authority at Berhampore did not admit his wife stating that the patient was serious and advised to take her to Kolkata for treatment. Being so advised he took his wife to NRS hospital and she was admitted therein. His wife Amina Bibi was treated at NRS hospital for 17 days. Doctors of NRS hospital saved his wife but she lost her eye sight due to injury received during the incident. After 10 days of the incident, the complainant had been to the police station however, he had to take assistance of a scribe for lodging the complaint. The witness further deposed that the complaint was read over and explained to him and after understanding the contents thereof he signed the same, his signature from the written complaint admitted in evidence and was marked as exhibit. He identified all the accused persons in court.

PW-2, Tarjina Bibi, is the daughter of the complainant Sobur Ali and the injured Amina Bibi. She deposed that an incident occurred about two

years and seven months back when she was at her father's house for giving birth to a child who was then aged about 15 days. When the incident took place, she was inside the house and at that time the accused persons encircled/surrounded to kill her father. The accused person resided about ½ km. away from their house and she also noticed that the accused persons rushed to their house being armed with hansua, kudal, lathi, chunk of brick etc. and they were shouting to kill her father. Seeing that, she kept her new born baby inside the room and when she came out from her room, she found that her mother assessing the mood of the accused persons and apprehending that there might be some mishap towards her father, she forced her father to be inside a room. The accused persons could not find her father and in order to find him, directed her mother to bring him out and when her mother refused to do so, the accused persons did not pay any heed to her request and caught hold of her mother's neck, pressed it when accused Saidul assaulted her mother with a chunk of brick upon her face when her mother received grievous injury at her right eye. On receipt of such injury, her mother Amina Bibi became senseless and fell down. Seeing such incident, she started shouting and asked her father to come out as the accused persons killed her mother, but her father could not come out due to fear and on being assured that the accused persons fled away, her father came out of the room when they tried to nurse her mother by sprinkling water upon her face but she did not regain her sense. Immediately after the incident, Laltus Bibi and Anjura Bibi arrived there and arrangements were made to take her mother by a Maruti Van

to police station. She subsequently learnt from her father over phone that her mother was shifted from one hospital to another and finally at a hospital in Kolkata for treatment and she returned home after 17-18 days. She also complained in her deposition that due to infliction of such injury by the accused persons, her mother permanently lost her eyesight of her right eye. She identified all the accused persons in court.

PW-3, Majrul Sk., was declared hostile as he did not support the prosecution case but also distorted the facts.

PW-4, Amina Bibi, is the injured who narrated the incident in the same spirit as PW-1, however, she added that she noticed Mithun Sk. was armed with spade and a hansua, Saidul was armed with hansua and a chunk of brick, Rejaul was armed with chunk of brick and a bamboo stick, Nektar was armed with a henso and Tanjura Bibi was armed with a chunk of brick. Seeing the accused persons, she kept her husband and son inside the room and shut the door of the courtyard so that the accused persons may not enter. The accused persons directed her to open the door, but when she refused, they threatened her that they will finish her and kill her husband. She thereafter added that the accused persons dashed the door with force and opened the door and as she was restraining them in entering in courtyard of the house, the accused Nektar ordered his associates to kill her first and stated that he would manage the episode of killing. Then Tanjura Bibi caught hold of her neck and Saidul hit her with a chunk of brick on her face. On being so

assaulted, she fell down and lost her senses. Her daughter started shouting/screaming when the accused persons fled away. Her husband and her son thereafter made arrangement to take her to hospital with a Maruti Van. She was first taken to Bhagwangola P.S. and from there to Kanapukur BPHC. Thereafter, she had to visit Lalbagh SD Hospital, Berhampore Hospital and, finally, to NRS Hospital, Calcutta. She remained at NRS Hospital, Kolkata for 17 days. She also complained that she lost sight of her right eye permanently and was unable to hear properly and was still continuing her treatment. She identified the accused persons in court.

P.W.-5 is a medical officer attached with the Kanapukhur BPHC, who deposed that he attended the patient and found that she/the injured had lacerated injury having length of 1.5 cm. over right eyelid, swelling of right eyelid and no movement of right eyeball. The right eyeball was found displaced and fixed downward. Cornea directed downward and conjunctivitis hemorrhage and injury were present. He identified the report which was marked as exhibit.

P.W.6 - Laltus Bibi, is a co-villager, who deposed that her house was at a walking distance from the house of the injured and, at the relevant point of time, on hearing hue and cry, she came out to enquire regarding the incident and proceeded towards the house of Sabur, where from she could hear the hue and cry. When she reached near the house of Sabur Sk, she noticed that accused persons being armed with bamboo stick, *chaku* in their hands rushed

towards the house of the complainant and she being curious followed them. The said accused persons upon reaching at the house of said Sabur, made an attempt to attack them. Amina apprehended the attack, so she closed and locked the door. The accused persons threatened Amina to bring out her husband as they intended to kill him. The daughter of the injured, at the relevant point of time, was present at the house.

It was further stated that as the injured did not obey the order of the accused persons for bringing out her husband, accused Saidul assaulted with chunk of a brick at the right eye of Amina, for which she fell down on the ground and became unconscious. She received grievous injury at her eye due to which blood started oozing from her eye. Finally, the accused persons fled away. Seeing the condition of the injured, steps were taken for treatment of the injured. However, she was first taken to Bhagwangola P.S., thereafter, to the Kanapukhur BPHC and, subsequently, Lalbagh SD Hospital, then to Berhampore Hospital. She had been with the patient till the Berhampore Hospital. But, when the doctor advised Amina to be shifted to Kolkata, from there, she did not proceed further.

P.W.-7 is Asiruddin Miya, ASI of Police, who as per the directions of the officer-in-charge started the case being Bhagwangola P.S. Case No. 359 of 2013 dated 10.10.13 under sections- 448/325/326/307/34 of the IPC. He filled up the formal FIR. He identified his endorsement over the written

complaint and the formal FIR which contained his signature. The same was marked as exhibit.

P.W.8 is Dr. Anil Kumar Ghanta, who was attached to NRS Medical College and Hospital on 24.09.2013 and examined Amina Bibi. On examination, he found grossly lacerated injury on right eye with globe rupture and injury at right upper eye lid with no vision. The nature of the injury was grievous as there was total loss of vision on right eye. As the injury report was prepared and signed by him, the same was admitted in evidence and marked as exhibit. According to Dr. Ghanta, Amina Bibi was admitted at NRS Hospital on 24.09.2013 and was there till 4.10.2013.

P.W.9- Bibekanand Mondal, is Sub-Inspector of Police attached to Bhagwangola P.S., who was endorsed with the investigation of the case and after collecting the materials as has been described above, submitted charge-sheet before the learned jurisdictional court.

Mr. Dewan, learned advocate for the appellant submitted that the present four appellants have been falsely implicated in the instant case as there was delay in lodging the FIR, as there are major inconsistency in the version of the witnesses and the spirit and essence with which the facts have been placed before the court in course of the evidence so recorded particularly of the vital witnesses being PW-1 and PW-4 do not inspire confidence as the same suffers from inherent contradictions.

Learned advocate also drew the attention of the court to the evidence of PW-2, Tarjina Bibi, PW-4, Amina Bibi, PW-6, Laltus Bibi. Reference was drawn by the learned advocate to the cross-examination of the Investigating Officer and submitted that each of these witnesses have improved their version in court which creates a doubt regarding the veracity of the witnesses who have deposed in court.

Having regard to such depositions according to the learned advocate the same should not be relied upon to arrive at a finding of guilt and the judgment and the order of conviction so passed by the learned trial court should be set aside.

Ms. Biswas, learned advocate appearing for the State opposed the contentions and submitted that even if the minor discrepancies which have been pointed out by the appellant are admitted to be true but going by the evidence both oral and documentary what is consistent is that Amina Bibi has lost the vision of her right eye and Saidul Sk. and Tanjura Bibi were involved.

Learned advocate has also drawn the attention of this court to the relevant part of the evidence wherefrom she emphasized that it was Mithun Sk. who was responsible for the incident as he had intimidated the others in commission of the offence particularly to attack the house of the complainant.

It has also appeared in evidence that Nektar Sk. has directed the accused persons to kill Amina Bibi (PW-4) and stated that he will manage the

episode of her killing, but however as he has expired during the pendency of the appeal and the learned advocate has not argued it would not be fit and proper to accept the allegations which are appearing against him.

Learned advocate has also submitted that so far as Rejaul Sk. is concerned he was seen at the place of occurrence with deadly weapons as is revealed from the evidence of PW-4. Lastly it was emphasized by the State that having regard to the consistent version of prosecution witnesses it would not be fit and proper to interfere with the judgment and order of conviction and sentence so passed by the learned trial court.

In *Mano Dutt & Anr. –Vs. – State of Uttar Pradesh*, (2012) 4 SCC 79 by referring to the judgment of *Abdul Sayeed –Vs. – State of M.P.*, (2010) 10 SCC 259, it was held:

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. ‘Convincing evidence is required to discredit an injured witness.’.....”

Similar view was taken by the Hon’ble Supreme Court in *Jarnail Singh –Vs. – State of Punjab*, (2009) 9 SCC 719, wherein it was observed:

“.....that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.....”

It was summarized by the Hon'ble Supreme Court in Abdul Sayeed's case (supra) in paragraph 30 as follows:

“30. *The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”*

I have taken into account the deposition of all the witnesses. There has been some embellishment in the version, but that do not touch the core issue regarding PW-4 being assaulted and her vision of right eye having been lost because of injury being inflicted by Saidul Sk. At the relevant point of time, it has been complained that the accused Tanjura Bibi played the pivotal role by holding the neck of PW-4 when Saidul hit the injured with a chunk of brick on her face. Having considered the same, I am of the opinion that so far as the offences under Sections 448/325/34 of the Indian Penal Code are concerned, there is no other option left to this Court except to hold the aforesaid accused

persons guilty of the said offences having considered their participation in commission of the offences.

So far as the accused Rejaul Sk. is concerned, he was at the place of occurrence armed with chunk of brick and a bamboo stick. However, there was no overt act which was attributed to him.

So far as Mithun Sk. is concerned, he was the main person for whom the incident occurred and was also present at the place of occurrence inciting others. Consequently his conviction under Sections 448/325/34 of the Indian Penal Code is hereby affirmed.

However, having regard to the sentence so imposed and the fact that the incident complained of is of the year 2013 and more than ten years have passed since the incident occurred, I am inclined to modify the sentence in respect of some of the appellants.

So far as the accused Saidul Sk. is concerned, he is directed to suffer rigorous imprisonment for a period of five years for the offence under Sections 325/34 of the Indian Penal Code and so far his sentence under Sections 448/34 of the Indian Penal Code is concerned, the same is not interfered with.

So far as the accused Tanjura Bibi is concerned, her sentence is considered leniently having regard to the fact that she is a lady aged about 58 years and the sentence under Sections 325/34 of the Indian Penal Code so passed by the learned trial court is reduced to suffer simple imprisonment for

a period of two years. So far as the sentence under Sections 448/34 of the Indian Penal Code is concerned, the same would remain unaltered.

So far as the accused Mithun Sk. is concerned, his sentence for the offences under Sections 325/34 of the Indian Penal Code and Sections 448/34 of the Indian Penal Code so passed by the learned trial court is not interfered with.

So far as the accused Rejaul Sk. is concerned, he is directed to deposit a fine of Rs.10,000/- by 30.11.2024, in default, he would suffer sentence of simple imprisonment for a period of three months.

So far as the accused Saidul Sk., Tanjura Bibi and Mithun Sk. are concerned, they are on bail. As such, their bail bonds stand cancelled and they are directed to surrender before the learned trial court immediately to serve out the sentence.

As the accused Rejaul Sk., as directed above, is granted time till 30.11.2024 for depositing the amount of Rs.10,000/-, in case such an amount is not deposited within the relevant period, the learned trial court will exhaust the process of law under Section 421 of the Code of Criminal Procedure and issue process for compelling him to suffer the default sentence.

As directed by the learned trial court the sentences in respect of all the offences would run concurrently.

With the aforesaid observations, the appeal being CRA 312 of 2019 is **partly allowed.**

Pending connected application, if any, 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.)