

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 288 of 2003

Raghunath Shit & Ors.

-Vs-

State of West Bengal

For the Appellants :Mr. Tarapada Das
(*Amicus Curiae*) Mr. Rajeshwar Chakraborty

For the State :Mr. Avishek Sinha

Heard on :0.10.2023, 03.01.2024, 17.01.2024, 22.01.2024

Judgment on :22.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 20th June, 2003 passed by the Learned Additional Sessions Judge, 2nd Court, Bankura in Sessions Trial No. 5(9) of 2002 arising out of Sessions Case No. 5(11) of 1995 acquitting the appellants of the charge under Sections 147/149/326/307 of the Indian Penal Code while convicting the appellants under Sections 325/34 of the Indian Penal Code and sentencing each of them to suffer one year simple imprisonment and to pay a fine of Rs.2,000/- each, in default further three months simple imprisonment.
2. The prosecution case precisely stated one Sushanta Shit, PW-1 lodged a complaint at Bankura Police Station on 22.07.1994 alleging, inter alia, that

on 22.07.1994 at about 4-4.30 a.m. he received an information that Raghunath Shit, Paresh Shit, Swapan Shit, Arup Shit and Damodar Atta had been ploughing their (complainant's) land and subsequently the complainant along with his father Biswanath Shit and elder brother Prasanta Shit went to the field and asked the accused persons not to plough the land. Suddenly the accused persons brought out lathi and rod hidden in the said land and began to assault Biswanath and Prasanta severely. At the time of assault Raghunath and Damodar Atta were armed with rod and Paresh, Arup and Swapan were armed with lathi. At the time of assault the accused persons exclaimed to kill Biswanath and Prasanta. After witnessing such assault upon Biswanath and Prasanta by the accused persons, Sushanta returned to his village and thereafter he along with Monoj Shit, Sandip Shit again went to the place of occurrence and found Biswanath and Prasanta to have sustained bleeding injuries and the accused persons were escaping being armed with rod and lathi. Biswanath and Prasanta were taken to Gobindanagar Hospital for treatment.

3. Treating the said complaint as First Information, the Officer-in-Charge, Bankura Police Station instituted a case being Bankura Police Station Case No.128/1994 dated 22.07.1994 under Sections 147 /148 /149 /323 /326 /447 /307 of the Indian Penal Code against the accused/appellants, investigated the case and submitted charge-sheet before the Learned Sub-Divisional Judicial Magistrate, Bankura under Sections 147/ 148/ 149/ 323/ 326/ 307/ 447 of the Indian Penal Code against the accused/appellants.

4. Charges were framed against the appellants under Sections 147/ 148/ 149/ 326/ 307 of the Indian Penal Code to which they pleaded not guilty and claimed to be tried.
5. In order to establish its case prosecution examined 14 witnesses and exhibited certain documents and the defence examined 1 witness.
6. The Learned Amicus Curiae representing the appellants submits as follows:-
 - i. PW-4 and PW-5 being the relatives of the complainant were declared hostile by the prosecution. Furthermore, all the independent witnesses i.e., PW-6 (hearsay witness), PW-7 (hearsay witness) and PW-8 were declared hostile by the prosecution.
 - ii. PW-4 being one of the relatives (declared Page Pape hostile) stated in his cross-examination that he found Raghunath Shit, Swapan Shit and Arup Shit in injured condition at their house which indicated the occurrence of a mutual scuffling between the appellants and the injured victims i.e., PW-2 and PW-3.
 - iii. PW-1 stated in his cross-examination that a case under Section 144 Code of Criminal Procedure was filed in respect of a disputed land between the father of the complainant i.e., PW-2 and his uncles. He further stated that other cases were also pending between the father of the complainant and his uncles which had been initiated after the institution of the present case.

PW-4 stated in his cross-examination that Biswanath Shit (PW-2) and the appellants partitioned their property about nine to ten years ago from the date of incident i.e., on July 22, 1994, referring to the

existence of a long standing civil dispute and false implication of the appellants cannot be ruled out completely.

- iv. PW-13 who treated PW-2 and PW-3 namely Biswanath Shit and Prasanta Shit stated in his examination-in-chief that P.W.2 sustained suspected fracture injury and swelling over the bone and 2 superficial injuries 3 cm. each on each side of margin which were lacerated. He further deposed that P.W.3 sustained fracture injury negligible in nature.

PW-13 in his cross-examination stated that he found from the injury report that Raghunath Shit sustained injury on the lower thigh with swelling and tenderness with a wound of 1 cm. above left knee and Page 2 abrasion marks. P.W.13 further stated in his cross-examination that there was interpolation of date and time in the injury report being Exhibit-5.

There was a free fight between the parties and both the appellants as well as the victims received injuries on their persons.

- v. PW-14 being the investigating officer neither seized the offending weapon nor seized the wearing apparels of the injured.

However, as the offending weapon was not seized by PW-14 (Investigating Officer), the nature of the offending weapon could not be ascertained as well as the link to connect the appellants with the alleged offence could not be established.

The perfunctory investigation on the part of the investigating agency had severely prejudiced the appellant and thereby the prosecution case could not be proved beyond all reasonable doubts.

- vi. No specific role had been attributed to any of the appellants and all the allegations were general and omnibus in nature. The mode, manner and fashion of assault had not been stated by the prosecution.
 - vii. There were several omissions, contradictions and exaggerations by and between the witnesses and they had subsequently tried to develop a case in order to secure the conviction of the appellant. Therefore, their versions could not be safely relied upon.
 - viii. The prosecution case could not be proved beyond reasonable doubt by the prosecution and as such the appellants should get the benefit of doubt. The prosecution had also failed to prove the manner and genesis of the assault upon the injured victims and all the injured victims and alleged eye-witnesses have deposed after 5 years and there were smacks of tutoring. Therefore, the Learned Trial Court was totally erroneous in convicting the appellant under Sections 325/34 of the Indian Penal Code.
7. Learned Advocate for the State submitted that the evidence of the injured witnesses namely PW-2 and PW-3 mentioned the manner in which they were assaulted and the names of the assailants were mentioned by the aforesaid injured witnesses on the exhibits concerning the injuries report. It was further submitted that the hostile witnesses were the relatives of the appellants who tried to shield the appellants who had witnessed them in

injured condition. Though the witnesses namely PW-4, 5, 6, 7 and 8 were declared hostile by the prosecution, their depositions confirmed the history of assault corroborating the incident of free fight in the presence of the appellants. The evidence of the doctor also revealed the injury to have been sustained by the victims. The prosecution had been able to prove its case despite certain latches which did not affect the crux of the criminal case and therefore the appeal shall be dismissed.

8. Assailing the evidence of the prosecution witnesses namely PW-2 and 3 transpired that the appellant Raghunath Shit assaulted PW-2 on his head, left hand and left leg. Rest of the accused persons assaulted him with the lathi. His elder son i.e., PW-3 was also assaulted by the appellants Paresh Shit and Swapan Shit.
9. Evidently the family of the appellants and the victims had been inimical to each other instituting several civil litigations against each other. Such antagonist attitude sparked the dispute which resulted in a clash amongst the injured persons as well as the appellants though there had been lapses on the part of the investigating agency, whereby the offending weapons and the wearing apparels of the victims were not seized to be sent for examination by experts. Medical documents marked as exhibits did not deny the hospitalization of the victim Biswanath sustaining grievous hurt.
10. The evidence of the injured witnesses (PW-2 and PW-3) corroborated with evidence of the PW-13 which established the prosecution case. The cross-examination of PW-3 further revealed the appellants Raghunath Shit and Swapan Shit to have sustained injury justifying the defence case of brawl

and clash between both the parties. Delay in registering the FIR had not been in ordinate.

11. The appellant Swapan Shit has expired on 20.04.2021. The instant appeal gets abated against the said appellant.
12. Considering the act of the appellants as a consequence of sudden provocation involving the victims and the lapse of time, the appellants are directed to be released on probation under Section 4 of the Probation of Offenders Act, 1958 on entering into bond of Rs.10,000/- with two sureties each, to ensure that he will maintain peace and good behaviour for the remaining part of his sentence, failing of which he can be called upon to serve the sentence. Fine to be paid of Rs.10,000/- within 120 days from the date of this order failing which they shall be called to serve out the sentence.
13. There is no order as to costs.
14. I record my appreciation for the able assistance rendered by Learned Advocate, Mr. Rajeshwar Chakraborty, as *Amicus Curiae* in disposing of the appeal.
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.)