

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 364 of 2019

**Sanchoy Roy
Versus
The State of West Bengal**

For the Appellant : Mr. Arunava Ganguly

For the State : Mr. Debasish Roy, Ld. P.P.
Mr. Saryati Dutta
Ms. Diksha Ghosh

Reserved on : 19.08.2024

Judgement on : 02.09.2024

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction and sentence dated 27.03.2018 and 18.04.2018 passed by the learned Additional District & Sessions Judge, Fast Track Court, 1st Court, Hooghly in Sessions Trial No. 03/2017 arising out of Sessions Case No. 146 of 2016, wherein the learned Trial Court was pleased to hold the appellant guilty, thereby convicting him under Section(s) 324 and 307 of the Indian Penal Code and sentencing him as follows:

- (i) For the offence under Section 324 of the Indian Penal Code -
Rigorous Imprisonment for 18 months and fine of Rs.1,000/ in
default to suffer Simple Imprisonment for 1 month.
- (ii) For the offence under Section 307 of the Indian Penal Code -
Rigorous Imprisonment for 6 years and fine of Rs.3,000/- in
default to suffer Simple Imprisonment for 1 month.

Pandua P.S. case no. 437/2015 dated 11.07.2015 was registered for investigation on the basis of an information submitted by Sudip Rai @ Roy (brother of the injured) with the Officer-in-Charge Pandua Police Station. The allegation made in the letter of complaint were to the effect that the complainant's brother, namely Sandip Rai @ Roy while returning from market was gossiping with his friends, Avi Rai @ Roy and Sumanta Bandopadhyay when a person rushed behind him and inflicted blows with a katari (sharp edged weapon). The accused was identified as Sanchoy Roy and as a result of his attack with the sharp edged weapon the injured sustained serious injury on his head and arm. On being injured Sandip Roy started to yell when a mob assembled there and they chased Sanchoy, who ran towards his home and was saved by his mother and wife. Sanchoy had an intention to kill his brother as there was an enmity prevailing between them.

The complainant's brother i.e. injured Sandip was taken to Pandua Rural Hospital and from there he was transferred to Chinsurah I.B. Hospital

for better treatment. So the complainant prayed to the police authority to take action against the accused.

On receipt of the aforesaid complaint the Officer-in-Charge of Pandua Police Station namely Suman Roy Chowdhury filled up the formal FIR and thereafter registered the case under Sections 341/324/326/307/120B of the Indian Penal Code and endorsed the investigation to Sub-Inspector of Police Uday Mukherjee for investigation. The investigating officer on completion of investigation submitted charge-sheet before the jurisdictional Court on or about 29.07.2015 under Sections 341/324/326/307 of the Indian Penal Code. The Learned C.J.M., Hooghly being the jurisdictional Court after compliance of the relevant provisions of law committed the case to the Court of sessions and thereafter the proceedings were transmitted for trial and disposal to the learned Additional District & Sessions Judge, Fast Track Court, 1st Court, Hooghly. The learned Trial Court by its order dated 20th March, 2017 was pleased to frame charge under Section 324 and 307 of the Indian Penal Code against the present appellant. The contents of the charge were read over to the accused/appellant to which he pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon 13 witnesses which included P.W.1, Sudip Rai @ Roy complainant and brother of the injured; P.W.2, Avi Rai @ Roy friend of the injured; P.W.3, Sumanta Bandhopadhyay friend of the injured; P.W.4, Malati Rai @ Roy a co-villager; P.W.5, Sunil Rai @ Roy neighbour of the complainant; P.W.6, Sandip Rai @

Roy, the injured person; P.W.7, Sk. Yasin Mondal scribe of the FIR; P.W.8, Sk. Sowkat Mondal, who signed the injury report; P.W.9, Dildar Hossain, co-villager; P.W.10, Dr. Aurobindo Bala, Medical Officer attached to Chinsurah Hospital; P.W.11, Dr. Anindita Mitra, Medical Officer of Pandua Hospital; P.W.12, Dr. Rahamat A. Alam, Medical Officer of Chinsurah District Hospital; P.W.13, Uday Mukherjee, investigating officer of the case.

P.W.1, Sudip Rai @ Roy is the brother of the injured and the complainant of the case. He deposed before the Court that the incident took place on 11.07.2015 at about 7.30 P.M. in their village at Gadar Par locality. At the time of incident he was returning home from the market and on his way at Gadar Par he found the accused Sanchoy Roy assaulted his brother and injured his forehead and left arm with a katari. Due to such assault, his brother sustained bleeding injury and he fell down on the road, and again the accused assaulted him further with the weapon because of his previous grudge and same was with the intention to murder him. Avi Rai @ Roy, Sumanta Bandopadhyay and others took his brother to Pandua Rural Hospital. The injury of his brother was stitched at the Pandua Rural Hospital and he was thereafter referred to Hooghly Sadar Hospital for further treatment, his brother was admitted at the Sadar Hospital and he remained there for 7 days. He further deposed that the incident was informed to Pandua Police Station who came to Pandua Hospital and one Jan Mondal drafted the petition of complaint under his instruction. Thereafter, on being satisfied he signed on the complaint, he identified his signature in the complaint which was admitted in

evidence. He also deposed that at the time of treatment of his brother he was present there at the Hospital and narrated the incident to the doctor. Subsequently, over this issue he was interrogated by the Police authority. In cross-examination he denied the fact that his a brother while returning home from the agricultural field with farming equipments fell down on the road and sustained injury. In cross-examination he also deposed that his brother teased wife of Sanchoy. He further denied in his cross-examination that his brother was never assaulted by Sanchoy in the manner as described by him on the relevant date.

P.W.2, Avi Rai @ Roy is friend of the injured Sandip Rai @ Roy, who deposed before the Court that the incident took place on 11.07.2015 at about 7.30 P.M. near Gadar Par in Panchpara village, when he along with Sumanta Bandopadhyay and Sandip Rai @ Roy were returning from the market. He deposed before the Court that at Gadar Par, Sanchoy Roy assaulted Sandip Rai @ Roy from behind with a Katari, as a result Sandip sustained bleeding injury on his forehead and right arm. All of them raised alarm when the local people rushed to the spot and they also took him to hospital. Sandip was taken to Pandua Hospital and his wounds were stitched, thereafter he was sent to Chinsurah Hospital. The witness however returned from Pandua Hospital. Police subsequently came and they visited the place of occurrence and his name along with others were recorded by the Police Officer. In cross-examination the witness denied the fact that no such incident as deposed by him did not happen. The witness also denied in cross-examination that any

illicit relationship existed between Sanchoy's wife and Sandip. He also denied the factum of Sandip not being injured in the manner on the date, as has been described by him.

P.W.3, Sumanta Bandopadhyay, is friend of the injured Sandip Rai @ Roy who deposed that the police examined him and during such interrogation he stated to the Police that on 11.07.2015 at about 07.30 P.M. near Gadar Par in Panchpara village he along with Avi Rai @ Roy and Sandip Rai @ Roy were returning from the market and at that time when they reached at Gadar Par, Sanchoy Roy assaulted Sandip from behind with a katari. As a result, Sandip sustained bleeding injury on the upper part of his forehead and right arm, all of them raised alarm and Sanchoy managed to run away in the darkness. The local people took Sandip to hospital and he also accompanied them. Sandip was taken to Pandua hospital where his wounds were stitched. Thereafter, he returned home and the injured was sent to Chinsurah Hospital. Police also visited the place of occurrence. In cross-examination the witness denied of the incident not having taken place on the said date and time and also denied regarding Sandip not being injured with a katari. However, he stated in cross-examination that Sandip Rai @ Roy was also a farmer but he denied the fact that Sandip Rai @ Roy sustained injury by falling on the road while returning home with farming equipment.

P.W.4, Malati Rai @ Roy is a co-villager who deposed that about two years ago at about 7.30 P.M. at Gadar Par when Sandip Rai @ Roy was returning from the market Sanchoy assaulted Sandip with a katari from

behind. As a result, Sandip sustained bleeding injury on his head and arm. The injured Sandip raised alarm, when the local people came out from their respective houses and thereafter, his father, elder brother and others took him to Pandua Hospital. From Pandua Hospital Sandip was transferred to Chinsurah Sadar Hospital. In cross-examination she deposed that when Sandip was taken to Hospital, Jotsna Roy, Pampa Roy, Sankar Roy, Malin Roy, Chobi Roy, Biswajit Roy, Sudip Roy and others gathered at the spot. She denied that there was any illicit relation between Sandip and the wife of Sanchoy Roy.

P.W.5, Sunil Rai @ Roy, is a neighbour of the injured who deposed before the Court that about two years ago at about 7.00/7.30 P.M. at Gadar Par when he was sitting on the other side of the pond and Sandip Rai @ Roy was returning from the market, Sanchoy Roy was lurking on the spot and assaulted Sandip with a katari from behind. As a result, Sandip sustained bleeding injury on his head and arm, when he raised alarm. On hearing such alarm he along with others reached the spot when Sandip was lying in injured condition. Thereafter, the villagers took him to Pandua Hospital where his wounds were stitched, and from Pandua Hospital he was transferred to Chinsurah Sadar Hospital. He identified the accused in Court. In cross-examination, he denied the incident of not having taken place and also that the injury of Sandip was not because he fell down along with farming equipments while he was returning back home from the agricultural field on uneven road.

P.W.6, Sandip Rai @ Roy is the injured who identified the accused in Court and deposed that the incident took place about two years ago in the evening at 7.30 P.M. at Gadar Par village, Panchapara. He narrated that he along with two of his friends namely Avi Rai @ Roy and Sumanta Bandopadhyay were returning from the market and on the way the accused person rushed towards him and inflicted blows on his head and on the upper part of left arm with a katari. Due to such assault he sustained bleeding injury and fell down on the spot (the witness before the Court also showed the cut mark on left portion of his head and the upper part of left arm). As a result, he raised alarm and his companions Avi Rai @ Roy and Sumanta Bandopadhyay were afraid on seeing blood and they rushed away. On hearing his alarm of screaming Dildar Hossain, Yasin Mondal, Sumanta Bandopadhyay, Avi Rai @ Roy and Sudip Rai @ Roy came to the spot and thereafter took him to Pandua Hospital. At Pandua Hospital his wounds were stitched and he was thereafter referred to Chinsurah Sadar Hospital. In the Hospital once police came to meet him thereafter he was discharged from the Hospital and taken to his residence where police interrogated him. On both the occasions, he narrated the incident to the police authority. In cross-examination he denied of having been to the Court with Yasin Mondal and accepted the fact that he was working under him in his agricultural field. He further in his cross-examination denied of the incident having not taken place and also denied regarding the factum of falling down on the ground along with the farming equipments on an uneven village road, thereby sustaining injury. He also denied the fact of having any illicit

relationship with the wife of Sanchoy Roy or any incident for which there has been any long pending dispute with him and the accused and as such he has falsely implicated the accused.

P.W.7, Sk. Yasin Mondal, is the scribe who wrote the complaint as instructed by Sudip Rai @ Roy. He was shown the written complaint as also his signature as a scribe. He identified the same in the FIR which was admitted in evidence.

P.W.8, Sk. Sowkat Mondal, is a co-villager who went to Pandua Hospital where Sandip Rai @ Roy was treated and his wounds were stitched. He heard from Sandip that Sanchoy assaulted him, he also signed on the injury report. He identified his signature in the injury report of Pandua Hospital and his signature was admitted in evidence.

P.W.9, Dildar Hossain, is a co-villager who knew Sudip Rai @ Roy and Sandip Rai @ Roy. The witness also stated that he knew Sanchoy Roy. He narrated that the incident took place on 11.07.2015 in between 7.00 to 7.30 P.M. at Goda Par. When he while returning from the market found Sandip Rai @ Roy was lying injured with bleeding on his head and right arm. He heard from Sandip that Sanjoy Rai @ Roy caused the injury with blows of katari. He along with others took the injured to Pandua Hospital, where the injured was medically treated and thereafter referred to Chinsurah Hospital. In cross-examination the witness denied of not having seen Sandip lying on the road at

Godar Par with injuries and also denied the fact that he did not take the injured to hospital for medical treatment.

P.W. 10, Dr. Aurobindo Bala, is Medical Officer who was attached to Chinsurah Sadar Hospital on 11.07.2015. He attended one Sandip Rai @ Roy who came with head injury. The patient according to him was admitted under Dr. R. A. Alam, Medical Officer attached to Chinsurah Hospital. He identified the patient which was marked Exhibit-3.

P.W.11, Dr. Anindita Mitra, is Medical Officer who was attached to Pandua Rural Hospital who deposed that on 11.07.2015, Sandip Rai @ Roy was medically examined and on examination it was found that he had deep cut injury extending from left side of forehead to scalp about 4 inches of length. Another horizontal deep cut injury was found on top of scalp measuring 2 inches approximately, and cut injury on the upper left arm, outer side. According, to the witness the patient was conscious but dazed. As far noting in the injury report, the witness stated that the injury was caused by Sanchoy Roy with katari and according to the opinion, of the witness, such injury can be inflicted by a katari. The condition of the patient was found to be serious and he was advised C.T. Scan and was also referred to Immambara Sadar Hospital, Department of Surgery. The injury report was prepared by the witness. He identified his signature in the injury report and it was admitted in evidence, the referral card issued for the patient was also identified by the witness and was marked as Mat Exhibit. In cross-examination the witness

stated that age of the injury was not recorded in the report as patient was in a serious condition, however, it was admitted by the witness that the history of assault which was recorded may be either by the patient or by the patient party and the witness could not recall whether the patient narrated the history of assault himself. On a suggestion being advanced in cross-examination the witness replied that it is less possible to sustain such an injury by a person unless he falls on some very hard as well as sharp surface.

P.W.12, Dr. Rahamat A. Alam, is Medical Officer attached to Chinsurah District Hospital. He deposed that on 11.07.2015 a patient Sandip Rai @ Roy was admitted under him at about 22.33 hrs with history of assault and head injury. The patient remained under his treatment till 15.07.2015 during the period of treatment the patient underwent clinical investigation including C.T. Scan. He referred to the report bearing his handwriting and signature which was marked as exhibit. He also deposed that the patient was struck with hard and sharp substance and such nature of injury can be caused with a katari. He also deposed that the patient could have died due to such injury, if he was not medically taken care of timely. In cross-examination he replied that the patient was conscious and further deposed in his cross-examination on some rough surface with sharp pebbles on it, similar type of injury is possible.

P.W.13, Uday Mukerjee is Sub-Inspector of Police who investigated the case on the same being endorsed by the Officer-in-Charge of the Pandua Police Station, he identified the signature of the Officer-in-Charge which was

admitted in the evidence and further deposed that after perusal of the written FIR, he interrogated the complainant. He visited the place of occurrence having prepared rough sketch map with index, examined the available witnesses and recorded their statement under Section 161 Cr.P.C. Then along with the complaint he went to the residence of the accused to serve notice but he was not found there. He also went to Pandua Rural Hospital and to meet the injured Sandip Rai @ Roy. He interrogated the injured and collected report of Pandua Rural Hospital as well as Chinsurah Sadar Hospital and on conclusion of investigation he submitted charge-sheet against the FIR named accused under Section 341/324/307 of Indian Penal Code. In cross-examination he deposed that he examined the witnesses as was named by the de-facto complainant and recorded their statements. He also accepted the factum that the village had morum road which were of uneven and rough surface. However, in cross-examination he replied that he did not examine the local Panchayat member or any other respectable person of the locality and also accepted the fact that in the index of rough sketch map he did not mention the name of the accused person.

Learned advocate appearing for the appellant submitted that the prosecution witnesses cannot be relied upon as their version has been inconsistent to such an extent, that no person of ordinary prudence would accept the manner in which the incident has been described by them. It was further contended on behalf of the appellant that the defence specifically confronted all the witnesses in cross-examination relating to the facts which

included amongst others the scope of the appellant being falsely implicated in connection with the instant case as the appellant had an illicit relationship with the wife of Sanchoy Roy, it was also specific case of defence that the injured in fact was on his way in the village morum road which was uneven and broken (with sharp edges) and he injured himself having fallen down with farming equipment on such uneven road.

It was further argued by the learned advocate that the witnesses cited by the prosecution were shown by the de-facto complainant who happens to be the brother of the injured and the investigating officer having failed to conduct the investigation in a proper manner by examining the independent respectable witnesses of the locality have in fact narrated a scripted story of the complainant in the form of a charge sheet. It was also pointed out that the inconsistency in the version of the witnesses who claim to be eye-witnesses are also palpable, as some of the witnesses have deposed that the injured sustained injury on his right arm while the injured himself has stated that he has sustained injury on his left arm. Lastly it was stated that to rely upon such evidence and arrive at a conclusion of guilt would cause irreparable loss and injury to the life and liberty of the appellant and the learned trial court having held the appellant to be guilty and thereby convicting him requires interference by this Court and as such the judgment and order of conviction and sentence so passed by the learned trial court is required to be set aside.

On the other hand learned advocate appearing for the prosecution stated that there were two eye-witnesses in the incident namely Avi Rai @ Roy

and Sumanta Bandopadhyay who were examined by the prosecution in connection with the instant case apart from Sandip Rai @ Roy. The version of both the eye-witnesses categorically referred to the accused having inflicted injuries with the aid of a katari upon the injured. The same is corroborated not only by the injured himself but also by way of medical evidence. In fact the doctor also deposed in cross-examination in response to a specific question when asked on behalf of the appellant, that had the patient or the injured not been brought in time for the treatment and the treatment had not commenced immediately it would have been a threat to the life of the injured. The State further contended that the appellant having committed the offence is presently relying upon minor inconsistencies which cannot substitute the ring of truth attached to the version of the prosecution witnesses regarding the assault being inflicted with the katari (sharp edged weapon) and the nature of injury which were fatal to his life. It was reiterated that having considered the prosecution case as a whole which is consistent in its version, supported with corroborating evidence both oral and documentary there is no scope for the accused to be acquitted from the charges. No interference according to the State should be made in respect of the judgment delivered by the learned trial Court and the same should be affirmed.

This court has taken into account the evidence of the prosecution witnesses which included two eye-witnesses and the injured. The version of the appellant/accused at the stage of Section 313 has also been taken into account which is as follows:

“Q.21. *Do you have anything to state about the allegation brought against you?*

Ans: *There was a quarrel between my wife and Sandip. On the next day, Sandip was moving through Gadarpar with instruments for cultivation. The pathway on Gadarapar is rough and uneven. He fell down on it. He sustained due to falling on the road and with the instruments of cultivation and, thereafter, due to the grudge relating to incident of quarrel with my wife, I have been falsely implicated and made accused in this case.”*

One of the important aspects of a criminal trial is that although the accused in cross-examination is entitled to ask questions for defending himself, but the nature of defence cannot be discrete to prevail over the standard of proof required to overthrow the test of ‘preponderance of probability’.

In this case, what has been asked by the defence with regard to the wife of Sanchoy Roy that the injured used to tease the wife of Sanchoy Roy, the injured had an illicit relationship with the wife of Sanchoy Roy, while the accused in his examination under Section 313 of the Criminal Procedure Code, deposed that the injured had a quarrel with his wife. On the other hand, in the letter of complaint which has been addressed to the Officer-in-Charge, which has been marked as a documentary evidence, it was stated that it was the wife and mother of Sanchoy Roy who save him, when the villagers chased him at his home. The foundation created by the defence in such circumstances should be of such nature that it would be able to overcome the evidentiary

value attached to the statement or deposition of the injured witness and or the eye-witnesses. Needless to state that there was a corroboration in this case so far as the injury being inflicted with the aid of a katari upon the injured Sandip Rai @ Roy is concerned.

Further, the injured in his version before the doctor at the first instance stated that he was assaulted with katari by the said Sanchoy Roy. So far as the evidentiary value of an injured is concerned, it was dealt with by the Hon'ble Supreme Court in the case of *Abdul Sayeed –versus– State of Madhya Pradesh reported in (2010) 10 SCC 259*, paragraph 30 of the said judgment is quoted below:

“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”.*

So far as the issue relating to the discrepancy of the injured having suffered injury in the right hand or left arm is concerned, the same is redundant in view of the fact that the injured himself, as P.W.6, has deposed before the court and showed the court also the injury having been sustained in

the left arm and the same is corroborated by P.W.11, the medical Officer namely Anindita Mitra who treated him. Thus not only the oral deposition of witness but the same is also substantiated by documentary evidence by an independent Medical Officer which goes to show that in the present case, if there was any inconsistency regarding the right arm or the left arm, the Court is to accept it as the left arm because of the statement of the injured and that of the Medical Officer, which is substantiated in the injury report.

In view of the aforesaid findings, this Court is of the opinion that there is no scope for interference in the conclusion arrived at by the learned Trial Court holding the appellant guilty and convicting him for the offence under Section 324 and 307 of the Indian Penal Code. As such, the judgment and order of conviction passed by the learned Additional Sessions Judge, 1st Fast Track Court, Hooghly in Sessions Trial No. 03 /2017 in connection with Pandua P.S. Case No. 437/15 dated 11.07.2015 is hereby affirmed.

However, having regard to the fact that the incident is nine and a half years old and the present appellant is a young person without any criminal antecedents having been referred to by the prosecution, I am of the view that the sentence so imposed under Section 307 of the Indian Penal Code be reduced to rigorous imprisonment for five years. So far as the sentence under Section 324 of the Indian Penal Code and the fine amount in respect of both the sentences are concerned, the same remains unaltered. Both the sentences would run concurrently and the period of detention, if any, undergone by the

appellant, the same should be set-off under Section 428 of the Code of Criminal Procedure.

The appellant is on bail and as such his bail bonds stand cancelled. He is directed to surrender before the learned Trial Court immediately.

Accordingly, Criminal Appeal No. 364 of 2019 is **partly allowed**.

Pending connected application(s), if any, are also disposed of.

Department is directed to send back the LCR immediately. A copy of the judgment be forwarded to the ld. Trial court immediately for compliance regarding the directions given above.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)