

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2381 of 2011

Sahabuddin Sk.

-Vs-

The State of West Bengal

For the Petitioners : Ms. Karabi Roy

For the State : Mr. Avishek Sinha

Heard on : 11.12.2023, 29.01.2024, 23.02.2024, 03.05.2024

Judgment on : 24.07.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner against the judgment and order dated 21.06.2011 passed by the Learned Additional Sessions Judge, 5th Court, Krishnagar, Nadia in criminal appeal no. 7 of 2008 dismissing the appeal and modified the order of conviction under Section 324 of the Indian Penal Code passed by the Learned Assistant Sessions Judge, 1st Court, Krishnagar, Nadia in Sessions Case No. 2(12)2006, Sessions Trial No. VI(Feb)2007 and convicted the petitioner under Section 307 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.500/- in default to suffer rigorous imprisonment for 2 days.
2. The prosecution case denoted a complaint narrating the incident whereby the complainant while sleeping in his room heard a sound and rushed to

the place of occurrence and found the petitioner to escape after assaulting his uncle namely Mirjamal Sk., with a sharp cutting weapon in his abdomen. The complainant took the injured to the police station, wherefrom he was taken to Dhubulia Primary Health Centre and subsequently referred to Shaktinagar Hospital. When the complainant reached the place of occurrence, injured revealed that one day a brawl cropped up between him and the petitioner which prompted the petitioner to assault him. The injured also told the complainant the petitioner assaulted him when he went to attend nature's call.

3. Dhubulia Police Station Case No. 47 of 2006 dated 01.04.2006 under Section 326/307 of the Indian Penal Code was initiated on the basis of the complaint lodged by one Safikul Sk. son of Ajijul Haque of village Panditpur.
4. After completion of investigation of charge sheet was submitted under Section 326/307 of the Indian Penal Code.
5. Charge was framed under Section 307 of the Indian Penal Code against the petitioner to which the petitioner pleaded not guilty and claimed to be tried.
6. The Learned Advocate for the petitioner stated that the Learned Trial Judge erred in holding the petitioner guilty for committing offence under Section 324 of the Indian Penal Code as well as the Learned Appellate Judge erred in holding the petitioner guilty of the offence as defined in Section 307 of the Indian Penal Code, as both judge expressed contrary view to each other.

7. The Learned Advocate for the petitioners as well as the State contradicted each other in their rival submissions.
8. The Learned Advocate for the appellant submitted that the prosecution failed to prove the intention that the accused murdered the victim or the knowledge that the injury caused by the appellant if at all would result in his death. Moreover, PW-3 heard about the incident and did not witness the same.
9. Learned Advocate for the petitioner further submitted that-
 - i. The petitioner was made an accused on the basis of the complaint lodged by one Safikul Sheikh. The allegation in the complaint was that on the night of 01.04.2006 when the complainant was sleeping at that time he heard a voice coming from the house of his uncle Mirjamal Sheikh. Ongoing there he found him in a bleeding condition. On query injured disclosed that when he came out to attend nature's call, the petitioner assaulted him with 'iron-fala' on his abdomen and ran away. He also disclosed that the petitioner had come to kill the injured as there was a land dispute going on between them. The injured was taken to the hospital by the complainant.
 - ii. On the basis of the complaint Dhubulia Police Station Case No. 47 of 2006 dated 01.04.2006 under Section 326/307 of the Indian penal code was started.
 - iii. PW-1 the injured stated that on the date of incident in the night when he was lying on the bed he was assaulted by the petitioner on his abdomen by sharp cutting knife PW-3 who is the complainant

stated in his complaint that the PW-1 (injured) said to him that when the injured came out to attend his nature's call he was assaulted by the petitioner. PW-1 never stated that he reported to any of the witnesses that the petitioner had assaulted him then wherefrom PW-3 came to know about the incident. PW-1 stated that the incident is an outcome of a previous grudge due to a dispute over landed property but no witness is there who have supported his contention. He even admitted in cross examination that he had no quarrel with the petitioner in the field. It is admitted that there was no electricity in the house of the injured. Though during evidence, PW-1 improved his version and stated to have identified in the light of kerosene lamp but no such lamp was recovered by the police during the investigation. The injured was referred to N.R.S. hospital but he was transferred back to Krishnagar which prima facie proved that the injured didn't suffer grievous injury.

- iv. PW-3, PW-5 and PW-6 were the interested witnesses so conviction could not be based on their evidence.
- v. PW-2, PW-3, PW-4, PW-5 stated to have heard about the incident from PW-1 who did not state the name of the assailants.
- vi. PW-7 the doctor in his evidence stated PW-1 was admitted on 01.04.2006 and discharged on 12.04.2006 which was less than 20 days. He also admitted that the measurement was not mentioned by him in the medical report. It was stated by him on the basis of his estimation.

- vii. Offending weapon, blood stained earth were not seized to ascertain the place of occurrence.
10. The Learned Advocate for the State submitted that the ocular evidence, the evidence of the victim and the medical report corroborated the commission of offence by the appellant and the prosecution was able to prove its case.
11. The evidence of PW-1 the victim can be relied upon if the same is trustworthy devoid of mendacity. PW-1 the victim recounted about a year in the night while he was lying on his bed. The appellant arrived at his house and assaulted him on his abdomen with the help of a sharp knife whereby he sustained severe bleeding injuries.
12. PW-1 in his cross-examination stated that it was true that nobody saw the incident on 01.04.2006 besides himself. He had no quarrel with the accused person in the field.
13. PW-2 stated to have found PW-1 with injuries on his stomach.
14. PW-7 deposed inter alia as follows:-

“The said patient was received at our hospital after being referred from Dhubulia B.P.H.C. He was admitted as an inpatient in the said hospital under my care on that date and was transferred to N.R.S. Medical College & Hospital for better treatment on 02.04.2006. During the period he was under my care and I examined him. He was admitted in the hospital with a history of stab injury on his abdomen following physical assault with sharp cutting instrument in the midnight on 01.04.2006 according to the statement of the injured himself. I found presence of penetrating injury on the right hypocondrium which was

directed upwards measuring 1" x 1 ½" which was found on the basis of finger probing. Serosagenial fluid was also oozing out. The patient had anemia and his physical condition was very poor. Thereafter upon taking consent of his relations, I operated him. After enlarging the previous incident I found that there was retroperitoneal haematoma on the left part of spinal area. Puncture wounds were also found of both valium and 2nd part of anterior deodinal walls which were repaired. The patient had two bottles of blood transfusion. On 02.04.2006 I referred the patient to the Higher Centre for further investigation and treatment. The patient did not go there, but he was again admitted in our hospital to the emergency ward on 03.04.2006. He was again under my care and was discharged on 12.04.2006. He was referred back from the Higher Centre. After his discharge, the said patient did not attend O.P.D. However, he attended my chamber for consultation on 25.04.2006 when I found the patient to be otherwise being cured."

15. In his cross-examination PW-7 stated as follows:-

"According to my opinion, the said injury was grievous in nature. As I have predicted that there was some injury on kidney, renal vessel or pancreious, so I had referred the said patient to the Higher Centre. When I inserted my finger it went through and peritoneal fluid came out. I could not measure in respect of the patient as to how far the peritoneal was."

16. PW-8 inter alia deposed as follows:-

"The patient complained of physical assault and attempt of homicide by some sharp cutting instrument when he was asleep by one Sahabuddin

and the said injured sustained injury with the help of a 'fala'. The said wound was noticed on the right lumbar region measuring about 2 to 3 c.m. in length. The patient's abdomen was hard and blood was coming from inside. It was suspected that there might have been internal haemorrhage of abdomen with some internal organ perforation."

17. During his cross-examination, PW-8 inter alia stated as follows:-

"It is a fact that the finding regarding the actual place of injury on the person of the patient as provided in my medical papers is correct. As soon as the patient went hard, there was reasonable apprehension that the said patient might have also suffered internal injuries in absence of any other symptom. I did not see in my eyes the said offending weapon like 'fala'.

18. Though the offending weapon was not recovered however the evidence of the injured witness corroborated with the medical evidence. The prosecution however could not prove that the appellant had the intention to murder the victim or had the knowledge that the assault would result in the death of the victim. The defence could not establish acrimonious relationship between the victim and the appellant.

19. The impugned order is modified to the extent that the conviction under Section 307 of the Indian Penal Code is altered to Section 324 of the Indian Penal Code.

20. The incident occurred 18 years ago. The appellant is nearly 70 years of age suffering from various ailments as submitted by the Learned Advocate for the appellant.

21. Considering the lapse of time and the age of the victim, the sentences modified to the extent that the appellant will only be liable to pay a fine of Rs.1,00,000/- within a period of 6 (six) months from the passing of this order.
22. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.
23. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)