

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2353 of 2013

Sankar Mahato & Anr.

-Vs-

The State of West Bengal

For the Petitioners : Mr. Sumanta Chakraborty
Ms. Kasturi Dutta

For the State : Mr. Avishek Sinha

Heard on : 19.09.2023, 14.12.2023, 03.01.2024

Judgment on : 14.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is filed by the petitioner being aggrieved by and dissatisfied a judgment and order dated 10.05.2013 passed by the Court of the Learned Additional Session's Judge, 2nd Court, Purulia in connection with Criminal Appeal No. 14 of 2008 thereby confirming the order of conviction and sentence dated 10.06.2008 passed by the Court of the Learned Judicial Magistrate, 3rd Court, Purulia in T.R. Case No. 771 of 2003 in connection with G.R. Case No. 747 of 1998 under Section 325 of the Indian Penal Code in connection with Jhalda Police Station Case No. 105 of 1998 dated 11.09.1998 under Section 325 of the Indian Penal Code further

directing the petitioners to appeal before the Court of the Learned Trial Court on 28.06.2013 to serve out the sentence of simple imprisonment of one year each and also to pay fine of Rs.1,000/- each, in default, to undergo further imprisonment from 15 days each.

2. The petitioners stated that one Theluram Mahato, son of Late Manbodh Mahato, village- Mahadebpur, Police Station- Jhalda, District Purulia, in his written complaint alleged inter alia to the Officer-in-Charge, Jhalda Police Station, to the effect that on 10.09.1998 at about 2 pm when his son Dhiren was sitting in front of his house, concerning a dispute regarding land, Sankar Mahato and Dilip Mahato, both sons of Baidyanath, Village- Mahadebpur, Police Station- Jhalda assaulted Dhiren with stick in their hands. Last evening he had taken his son to Jhalda Hospital wherefrom he was referred to Purulia Sadar Hospital. The complaint was received on 11.09.1998 at 11.25 hrs and Jhalda Police Station Case No.105 of 1998 dated 11.09.1998 under Section 325 of the Indian Penal Code was initiated.
3. The petitioners stated that in the injury report dated 10.09.1998 history of assault described assault of Sankar Mahato- his father, but charge-sheet was submitted against someone else, later charges under Sections 325/34 of the Indian Penal Code were framed without specifying as to who had assaulted with the lathi. The petitioners pleaded not guilty but after examining witnesses, by judgment dated 10.06.2008 the Court of the Learned Judicial Magistrate, 3rd Court, Purulia, in TR Case No.771 of 2003 (arising out of G.R. 747 of 1998) was pleased to pass an order convicting the

petitioners under Section 325 of the Indian Penal Code, thereby sentencing them to suffer simple imprisonment for one year each and to pay a fine of Rs. 1000/- each, in default, to undergo further imprisonment for 15 days each.

4. The Learned Advocate for the petitioners submitted that:-

- i. The Appellate Court did consider as to whether the facts in issue and other relevant facts as essential to establish the charges framed were at all proved or not, especially, when charges under Sections 325/34 of the Indian Penal Code could not fill up the lacuna of vagueness in charge prejudicing the petitioners.
- ii. The medical opinion never supported the charges brought, weapon of assault was not recovered, initial record of history of assault was contradictory with the prosecution case.
- iii. The failure of the appellate court to consider the reasons and motive for delayed reporting of the offence, place of occurrence being doubtful, absence of disinterested natural witnesses, failure to assess the motive of implication as evidenced in counter case, actually nullified the basis of appellate judgment making it liable to be set aside.

5. The Learned Advocate for the petitioners further submitted that:-

- i. On 4.7.13, victim of offence, son of complainant was added as the opposite party no. 2, being one Dhiren Mahato, Son of Theluram

Mahato, village Mahadebpur, Police Station Jhalda, District Purulia who was served with the petition.

- ii. The opposite party no. 2's date of birth being recorded, as appearing from Registration Certificate issued by the West Bengal Board of Secondary Education, being Annexure P/1, as 9.2.1983, was admittedly a juvenile on the date of commission of offence, i.e., on 10.9.98.
- iii. Theluram Mahato, father of opposite party no. 2, in the First Information Report alleged that on 10.9.98 at 2 pm when his son was sitting in front of house, over a previous land dispute, petitioners assaulted him with a stick in his head and hands who was taken to Jhalda Police Station and was referred to Purulia Sadar Hospital.
- iv. Petitioner nos. 1 and 2 were sentenced to suffer simple imprisonment of one year each and a fine of Rs.1000/-, in default, to further imprisonment for 15 days each, after examining 7 prosecution witnesses and accused persons under Section 313 of the Code of Criminal Procedure, on a charge under Section 325 of the Indian Penal Code wherein only village Mahadebpur and causing of grievous hurt at the instance of the petitioners was alleged.
- v. Petitioners beg to state that in examination under Section 313 of the Code, assault by stick by petitioner no. 1 upon the head of opposite party no. 2 and breaking of fingers of opposite party no. 2 by petitioner no. 2 was alleged although in the exhibit 2, injury report dated 10.9.98

of Deben Mahato Hospital showed opposite party disclosing assault by Sankar Mahato-his father. Moreover non-production and non-exhibiting referral document of Jhalda Primary Hospital negated the prosecution story.

- vi. In a case of admitted enmity due to existence of a counter case being Jhalda Police Station Case no. 104/98 dated 11.9.98, whereby the opposite party no. 2 was convicted on charge of attempting to commit rape upon sister of petitioner, as admitted by him as PW-4 and also PW-1 being cross examined as to whether his son received injuries by assault, prompting them to falsely implicate the present petitioners.
- vii. The absence of any independent witnesses jolted the prosecution case although PW-1 and 4 spoke of presence of women folk at the spot.
- viii. The Investigating Officer, PW-7 did not seize any lathi thereby making prosecution story doubtful and the Learned Judges did not appreciate that in absence of seizure of weapon of offence or blood stained dress or earth being seized, no independent witnesses being examined, existence of case of enmity due to previous counter case being present upon which the present lower court records showed, reliance was placed during previous bail hearing by petitioner nos. 1 and 2, the conviction on vague charge was not sustainable since charge never specifically attributed role, described no offending weapon and mentioned the entire village as place of occurrence, causing prejudice

amounting to miscarriage of justice, warranting acquittal by the order of this Hon'ble Court.

- ix. The Investigating Officer did not elaborate on previous examination of witnesses and their accounts making it unsafe to rely on first time depositions before the Learned Court.
- x. The medical evidence of PWs- 5 and 6 never elaborated as to whether alleged fracture was a result of use of force as alleged or due to fall upon ground or in course of attempting to prevent assault and the same having reiterated the names of assailants as petitioner no 1 and his father clearly show chances of false implication and the learned Judge should have relied upon contemporaneous medical documents in original to prove genuineness of alleged medical exhibits while lower court records show existence of documents about incident at later date.

- 6. Learned Advocate for the State submitted that the evidence of PW-1 and also the injured witness aptly corroborated with that of the medical evidence and the lapses on the part of the prosecution which does not affect the crux of the same will not vitiate the prosecution case and as such the appeal shall be dismissed.
- 7. PW-1 deposed seven years ago in the month of 'Bhadra' at about 2 P.M. as he was approaching his house for lunch, he saw his son Dhiren Mahato sitting on the Kuli road. Subsequently there was an altercation amongst Sankar Mahato, Dilip Mahato and Dhiren Mahato which subsequently gave

rise to an assault amongst them and Dhiren Mahato was beaten on his head and right hand by a 'lathi' by both the aforesaid assailants. Dhiren sustained bleeding injury on his head and he was immediately taken to Purulia Sadar Hospital. Subsequently a complaint was lodged in the concerned police station. During his cross-examination, PW-1, inter alia, deposed that Sankar Mahato and Dilip Mahato were brothers who had a married sister namely Tunhami Mahato. The victim Dhiren Mahato, his son was convicted by the Learned Sessions Judge, F.T.C. 3rd Court for committing an offence of rape against the aforesaid married sister of Sankar Mahato and Dilip Mahato. The de facto complainant was not accompanied by any of the villagers on his way to the hospital with the injured. He further stated that he did not reveal the names of the doctors at Jhalda and Purulia hospital.

8. PW-2 and PW-3 denied to have witnessed the incident. They were not declared hostile by the prosecution and subsequently cross-examination was declined.
9. PW-4 the injured victim in his cross-examination-in-chief stated that *"incident happened on 10.05.98, Thursday, in the month of Bhadra, at about 2 P.M. I was sitting in front of his house in Kuli. Long ago there was a dispute amongst Sankar Mahato and Dilip Mahato in relation to landed property. Sankar Mahato carried with lathi. He assaulted me in my head with a lathi. I had fallen down. And Sankar put his lip in my back and stood up thereon while I was lying on ground. At the time accused Dilip Mahato fractured the little finger, ring and middle finger one leg one by pulling the finger. I raised*

shouting in a very slow sound as lip was put in my back by accused Sankar. At that time many women folk had come out. Phalurani Mahato, my father came out. My father had seen that I was lying on the ground but I was conscious. My father came out with cycle when I was lying in the same place. My father and my mother put me to the carrier of the cycle. I was carried over to Jhalda P.S. Police asked me who were the assailants. Then I stated to police that Sankar Mahato and Dilip Mahato both son of Baidyanath Mahato assaulted me. Police had signed me on small piece of paper to go to hospital. I then had gone to Jhalda Hospital. In Jhalda Hospital, stitch was made in the head after cutting the hair. As the head was fractured and blood was poured out therefrom stitch was necessary. My head and hand were bandaged. I was referred to Purulia (S) Hospital for better treatment. I was admitted to Purulia (S) Hospital.”

10. During cross-examination, PW-4 stated that *“I have a dispute with Sankar Mahato and Dilip Mahato previously. I have gone for measurement of land when the dispute has started. I cannot say the plot no. and khatian no. At that time no case was registered. Not a fact that no dispute had taken place. I was sitting in the Kuli in my pira (platform). I have not stated to the I.O. that accused Sankar stood up on my back while I was lying on the field. I made mild shouting. Female persons came out. I cannot say who was the female persons.”*

11. PW-5 stated in his evidence that *“now I was posted as M.O. (Surgeon) at Purulia (Sadar) Hospital. On 10.09.98 I was in the same hospital in same*

capacity. On that date I examined Dhiren Mahato aged about 21 years, S/o- Thalaram Mahato of Mahadevpur, P.S.- Jhalda, as indoor patient. He was admitted with history of assault by 'lathi'. On examination, I found 2" long stitched injury over the vertex of the scalp. (i) swelling and tenderness over the right hand with suspected fracture, (ii) tenderness and swelling over the left wrist and hand. There was also abrasion on his little finger. Swelling in both the forearms. X-Ray was done. There was fracture over right middle ring and little finger. Patient was discharged on 20.09.98. No mentioning of nature of injuries. It was a grievous injury in my opinion. Bed head ticket was prepared by me in my handiwriting and it bears my signature. (Bed head ticket is marked as Exhibit-2). Orthopaedic Surgeon Dr. Amalesh Mondal was also consulted. He had also given his opinion. Patient was referred from Jhalda P.H.C. I know it had initial of Amalesh Mondal while in Court with bed head ticket. This kind of injury can be caused if anybody is being assaulted by lathi".

12. During cross-examination, PW-5 stated that "Amalesh Mondal is now posted in Purulia Sadar Hospital."
13. PW-6 stated in his evidence that "now I am posted as M.O. (Orthopaedic Surgeon) Purulia (Sadar) Hospital. On 17.9.98 I was in the same post in same capacity. On that date I examined one Dhiren Mahato, S/o- Thalaram Mahato vill.- Mahadevpur under P.S.- Jhalda, aged about 21 years, Hindu, male as indoor patient of the said hospital. Patient was admitted under Dr. D. K. Basak of the said hospital on 10.09.98. As per reference of Dr. Basak, I

examined the patient as specialist. I found on examination fracture on right middle and ring and little finger. Patient was on plastered. This portion of the bed head ticket submitted by me. This is the said ticket. (It is marked as Ext-2/1). This was a grievous injury. This kind of injury may be caused if one is being assaulted by lathi in the finger.” Cross-examination of PW-6 was declined.

14. The evidence of PW-1 and PW4 the injured witness corroborated with the medical doctors' evidence with regard to the medical documents and also in terms of the injuries sustained by the victim. Admittedly, the victim had been a convict of an offence of rape committed upon the sister of the accused appellants. There was sufficient reason to establish the mens rea on the part of the appellants to have assaulted the victim for sub-serving their grudge, hatred and animosity.
15. There are certain lapses on the part of the prosecution with regard to production of the initial G.D.E. entry number non-recovery of the offending 'lathi'. However, since the oral evidence corroborated with that of the medical evidence, the prosecution is said to have proved its case beyond reasonable doubt.
16. The revisional application is dismissed as far as petitioner no. 1 Sankar Mahato is concerned. Though the conviction is upheld, however considering the gravity of the offence and the lapse of time, the sentence is modified to extent of detention already suffered by the petitioner no. 1. Dilip Mahato,

being a juvenile at the time of the commission of the offence, be placed before the Juvenile Justice Board.

17. There is no order as to costs.

18. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

19. 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.)