

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2674 of 2013

**Sanjib Khara @ Sanjib Kumar Khanrah & Ors.
-Vs-
The State of West Bengal & Anr.**

For the Petitioners	: Mr. Arnab Chatterjee Ms. Dhanasree Biswas Ms. Poulami Bose
For the Opposite Parties	: Mr. D. P. Mitra
Heard on	: 20.04.2023, 13.06.2023, 30.06.2023, 01.12.2023
Judgment on	: 12.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is preferred against the judgment dated 19th July, 2013 passed by the Learned 2nd Additional District & Sessions Judge, at Howrah in Criminal Appeal No. 31 of 2010, modifying the judgment and order passed by the Learned Judicial Magistrate, 1st Court, at Uluberia, Howrah in connection with Case No. 347C of 2001 and convicted the present petitioners for commission of offences punishable under Sections 323/34 of the Indian Penal Code, 1860 and sentenced them to pay a fine of Rs. 1000/- each, in default to suffer simple imprisonment for one month each.

2. The brief fact of the prosecution case was that on 15.11.2001, the complainant Sanat Kumar Ghorui, S/o- Lt. Panchanan Ghorui of village- Kishorepur, P.O.- Mohisrekha, P.S.- Uluberia, Dist.- Howrah, filed a petition of complaint before the then Learned S.D.J.M., Uluberia to the effect that on 20.10.2001 at about 9 P.M the complainant and the witness no.-1 his elder brother Sankar Ghorui were returning to their house from Kulgachiya market and as soon as they reached at the house of the accused persons near the Tulsiberia More, the complainant and his elder brother found that the accused no.-1, Sanjib Khanra coming towards Kulgachiya market and then they asked him why he and his other family members used filthy language yesterday and the complainant and his elder brother requested the accused person to give up such habit and to deal a good behaviour with them and not to repeat the same again, then the accused person became furious and begun to utter silly words to the complainant and his elder brother and at the same time the accused no.-1 exercised blows on the face, just below the left ear of the complainant for which the complainant received pain and tenderness on his persons, then the witness no.-1 intercepted the accused person from such act and saved the complainant. Thereafter, the accused person ran away to his nearby house and meanwhile all the accused persons rushed to the place of occurrence forming an unlawful assembly with rioting mode armed with lathi, torchlight and brick-bats etc. and they all began to assault the complainant and the witness no.-1. The accused person no.-1 hit the complainant with fists and blows on his face, left ear, backside, chest and on the different parts of the body of the witness

no.-1 for which they both received pain and tenderness and the accused person no.-2, Biswanath Khanra hit them with a torch light to their head and accused person no.-3 Sujay Khanra @ Prajib assaulted them with a lathi to their head, backside and other parts of the body for which they sustained severe pain, tenderness and the witness no.-1 received abrasion upon his both right and left elbow joints and below his right eye and right thigh and due to assault the witness no.-1 fell down the earth and then the accused no.-2 bite upon the right thigh and caused bleeding injury and the accused no.-4 and 5. Rekha Khanra and Dipti Khanra put their hand in order to do away the life of witness no.-1 by throttling and the accused no.-1 also used a brick to hit upon the complainant and the witness no.-1 and at the same time the accused persons exercised slaves, blow and kicks to them. The witness saw the occurrence and due to their intervention the lives of the complainant and the witness no.-1 were saved. The matter was duly diarised to the Uluberia P.S. on the same day vide G. D. Entry No.- 1106 dated 20/10/2001 and from the P.S. they were referred to Uluberia Sub-Divisional Hospital for medical treatment and they got medical treatment from there. The complainant was under the impression that the police will take proper step and the criminal court was remained close due to Puja vacation and that is why delay was caused to file this case. The complainant further stated that all the accused persons belong to the same family and their house is very close to the bastu land of the witness no.-1 and prior to this occurrence these accused persons excavated earth and made a ditch very closed to the bastu land of the witness no.-1 and the complainant and

the witness no.-1 protested against such act, perhaps out of that grudge the accused persons did the criminal acts in order to cause injury.

3. On the basis of this written complaint the cognizance was taken and the case record was transferred to this court for disposal and after examination of the complainant and two witnesses the process punishable under sections 144/323/34 I.P.C. were issued upon the accused persons.
4. Petitioner stated that petitioners and two others were made to stand trial in the instant case being Case No. 347C of 2001 which was presided over by the Learned Judicial Magistrate, 1st Court, at Uluberia, Howrah on the accusations of having committed offences punishable under Sections 144/323/34 of the Indian Penal Code 1860, where the petitioners and two others were convicted under Sections 144/323/34 of the Indian Penal Code 1860 and Learned Judicial Magistrate had been pleased to sentence them to suffer simple imprisonment for one year for the offences punishable under Sections 144/34 of the Indian Penal Code and also directed them to suffer simple imprisonment for a term of six months for the offences punishable under Sections 323/34 of the Indian Penal Code 1860.
5. Against the aforesaid decision of the trial Court, an appeal was preferred being Criminal Appeal No. 31 of 2010 modifying the judgment and order passed by the Learned Judicial Magistrate, 1st Court, at Uluberia, Howrah in connection with Case No. 347C of 2001 and convicted the present petitioners for commission of offences punishable under Sections 323/34 of the Indian Penal Code, 1860 and sentenced them to pay a fine of Rs. 1000/- each, in default to suffer simple imprisonment for one month each.

6. The prosecution case as alleged in the petition of complaint against the petitioners & others was as follows:

On 15.11.2001 the complainant Sanat Kumar Ghorui filed a petition of complaint before the then Learned Sub-Divisional Judicial Magistrate, Uluberia to the effect that on 20.10.2001 at about 9 p.m. the complainant and his elder brother Sankar Ghorui were returning to their house from Kulgachiya market and as soon as they reached at the house of the accused persons near the Tulsiberia More, the complainant and his elder brother found that the accused Sanjib Khanra coming towards Kulgachiya market and then they asked him why he and his family members hurled filthy languages the day before and the complainant and his elder brother requested the accused person to refrain from such habit and behave properly with them. The accused persons became furious and began to utter abusive words to the complainant and his elder brother and at the same time the said accused exercised one blow on the face, just below the left ear of the complainant for which the complainant received pain and tenderness on his person.

Thereafter the accused namely Sanjib ran away to his house and meanwhile all the accused persons rushed to the place of occurrence forming an unlawful assembly with rioting armed with lathi, torch-light and brick-bats etc and they all began to assault the complainant and his brother.

7. Learned Advocate for the petitioners submitted that –

- i. The petitioners had been falsely implicated in the instant alleged commission of offences.
- ii. It was apparent from the records that the Learned Judge, at no material point of time, considered that the petitioners could not be said to have the requisite mens rea to commit the offences as alleged.
- iii. The Learned Judge should have considered the pleading of the accused that the present case was the counter case of one earlier case lodged by the accused persons against the complainant and others and both the case and the counter case was required to be heard together.
- iv. The Learned Judge had failed to appreciate that the present complain case had been initiated after a long time gap, only to create a protection shield from the case lodged by the present petitioners being Comp. Case No. 341C of 2001 which was filed before the Learned Magistrate on 22/10/01 and same was still pending for disposal.
- v. The Learned Judge had failed to appreciate that allegedly P.W. 1 & P.W.2 were the only victims as well as eye witnesses. Surprisingly there were contradictions in their depositions regarding place of incident, time of incident, kind of offending weapons, manner of assault, role played by each accused persons etc.
- vi. From the deposition of P.W.1 & 2 as well as from the written complaint it was clear that allegedly Sanjib Khara first assaulted

P.W. 2 and thereafter he returned to his own house and subsequently Sanjib returned with other accused. After receiving the first alleged injury why the complainant & his brother without approaching towards a secured shelter, waited there to welcome the second alleged assault was incomprehensible.

- vii. The time gap between the two separate alleged story of assault by the present petitioners and others was unexplained.
- viii. The Learned Judge acted illegally and with material irregularity by not considering the fact that alleged incident took place on 20.10.01 but the complaint was lodged on 15.11.01, about a month later. However the case lodged by the present petitioner was filed within two days from the date of incident. This created a shadow of doubt about the authenticity of the allegation made in the petition of complaint.
- ix. The Learned Judge ought to have considered and presumed that though the alleged General Diary was lodged on 20.10.01 but the name of the accused persons and the manner of assault was not disclosed in that complaint before the Police.
- x. The Learned Judge should have held that the Learned Magistrate relied on the evidence of witnesses examined in this case ignoring the contradictions appearing in the evidence with regard to the time of the incident as well as weapons alleged to have been used and also with regard to contradiction between the oral evidence and medical evidence.

- xi. The Learned Judge failed to appreciate that P.W. 6 was examined as one of an independent local villagers. However the address stated by him related that he was not at all a local man of that locality where the alleged incident took place. It was pertinent to mention that P.W. 6 in his cross examination admitted that one civil suit was pending by and between the witness and the accused/petitioners, being T.S. No. 145 of 2000.
- xii. The Learned Judge had miserably erred in law as well as in fact by not considering that all the witnesses were interested witnesses; whereas the complainant claimed that at the time of incident several local people rushed to the place of occurrence and rescued them. However in the petition of complaint name of those independent local villagers were not mentioned.
- xiii. The Learned Judge failed to appreciate the deposition of the doctor who specifically deposed that:

 “No swelling injury suffered by Sanat Ghorui’. ‘No Black stain is found over the scalp and abdomen of Sanat Ghorui’. ‘Injury no. 1 and 2 of Sankar Ghorui may be caused due to presence of rough wall’. ‘The injury sustained below the eye of Sankar Ghorui may be caused by dashing on the wall’. ‘The injury sustained by the patients may be caused by themselves’.”
- xiv. The Learned Judge erred in law as well as in fact by not holding that P.W. 4 (Doctor) deposed that Sanat Ghorui (P.W. 1) was brought before him by Shankar Ghorui (P.W. 2) and Shankar Ghorui was

brought by Sital Chandra Khanra. P.W. 1 and 2 deposed that they together only went to the police station and from there to the hospital and that Sital Chandra Khanra, who happened to be an important witness was never cited as an witness in the petition of complaint.

xv. From the materials on record, no mens rea was attributable to the petitioners and as such no criminal charge, on the facts of the present case was tenable in law.

xvi. An order for setting aside the order of conviction and sentence is warranted under the circumstances in order to uphold the ends of justice.

8. The Learned Advocate for the opposite parties submitted that a revisional application being CRR 3412 of 2013 had been filed by the opposite parties against the judgment dated 19th July, 2013 modifying the judgment and order passed by the Learned Judicial Magistrate, 1st Court, at Uluberia, Howrah in connection with Case No. 347C of 2001 and convicted the present petitioners for commission of offences punishable under Sections 323/34 of the Indian Penal Code, 1860 and sentenced them to pay a fine of Rs. 1000/- each, in default to suffer simple imprisonment for one month each. Based on the grounds stated therein and therefore, the instant revisional application should be dismissed.

9. A circumspection of the prosecution witnesses revealed as follows:-

i. P.W.-1, Sanat Kr. Gharui, the complainant stated in his evidence that on 20.10.01 the occurrence took place at about 9 P.M. near Tulsiberia

more in front of the house of the accused persons. While he along with Sankar Gharui was returning home from Kulgachia, on the way in front of the house of the accused persons they saw the accused person no.-1, Sanjib Khanra and they asked him about an incident caused by him prior to the date of occurrence. They asked him about the incident of abuse by him to their family members but he reacted and misbehaved with him even assaulted him with fist on his face. His elder brother intervened and rescued the complainant, then the said accused went to his house situated at the distance of 100/150 cubit from the P.O. and thereafter, all the accused persons came jointly at the same place while they were standing there and they were armed with lathi, torchlight and brick bats etc. and then the accused persons began to assault the complainant. The accused Pradip @ Sujay assaulted him with the help of lathi on his head, chest and various parts of his body and he also assaulted the elder brother of the complainant. The accused Biswanath assaulted the complainant on his head with the help of torch light and assaulted to his elder brother also. The accused Sanjib Khanra assaulted them with the help of brick bats and remaining accused pressed the throat of his elder brother and assaulted them mercilessly with fist and blows and kicks. They sustained pain and swelling injury over their person. Due to bite by the accused Biswanath the elder brother of the complainant sustained bleeding injury over his thigh. Sankar Gharui also sustained injuries on his both elbows due to assault by brick bats. Then local people

rushed to the P.O. and rescued them and then they came to Uluberia P.S. and lodged diary and thereafter, Uluberia P.S. referred them to Uluberia S.D. Hospital for treatment and they have filed those documents regarding their treatment. The P.W.-1 further said that they were waiting for steps to be taken by the P.S. and due to long puja vacation they filed this case at belated stage.

- ii. P.W.-2, Sankar Gharui brought into light in his evidence that the incident occurred on 20.10.2001 at about 9 P.M. in front of the house of the accused persons on Tulsiberia Metal Road. He along with his brother Sanat were returning home from Kulgachia market to their house and he asked the accused Sanjib about the incident of previous date relating to soil cutting by the accused from his land, then the accused Sanjib suddenly hit a blow to Sanat at his left ear. The P.W.-2 managed to release him and then all the accused persons came to the spot on call of Sanjib with torchlight, stick, bricks etc. on their hands and all the accused persons then assaulted them from four sides. The accused Biswanath hit the complainant on his head with torch light. The accused Sujay hit the complainant with a stick on his chest, back and the accused Sanjib hit the complainant by throwing bricks upon him. The accused Sanjib also hit the P.W.-2 with a brick at his left elbow and he also hit him with a blow on the lower part of his eye. The accused Biswanath fell the P.W.-2 down and bite on his right thigh causing bleeding injury. The accused Dipti and Rekha tried to kill the P.W.-2 by catching his neck. Meghnath, Sasadhar Bhowmick, Sankar

Bhowmick, Rabin Pramanick, Sital Khanra saved them. They lodged a G.D. Entry at Uluberia P.S. on the very date of the incident and they were referred to Uluberia S.D. Hospital and they both were treated there. They both suffered pain for the injury over the body. In his cross examination P.W.-2 brought into light that due to hit of the torch light the head sustained swelling injury. Due to bite by the accused he sustained injury on the upper portion of thigh. From the cross examination of the P.W.-2 it also appears that the incident continued for about 8 to 10 minutes. They reached the Uluberia P.S. at about 10-30 P.M. and went to hospital at about 11 P.M.

- iii. P.W.-3, Meghnath Ghorui stated in his evidence that the incident took place on 20.10.2001 at about 7 P.M. to 8 P.M at Tulsiberia road at Kulgachia, P.S.- Uluberia, Dist.- Howrah in front of the house of the accused Biswanath Khanra. On that day he saw that all the accused persons rushed from their house with torch light, lathi and piece of brick and assaulted the complainant and Shankar Ghorui, brother of the complainant randomly and as a result the complainant and his brother fell down and he (P.W.-3) along with some other local people came to the spot and rescued them and at that time he was accompanied by Shankar Bhowmick, Sishidhar Bhowmick.

- 10. P.W.-6, Shankar Bhowmick said in his evidence that the incident took place on 20.10.2001 at about 9 P.M. at Tulsiberia Road at Kulgachia, P.S.- Uluberia, Dis.- Howrah. On that day he found that all the five accused persons assaulted the complainant Sanat Kr. Ghorui and Sankar Ghorui

with lathi and torch light. Biswanath Khanra was armed with torch light and Sujay Khanra was armed with lathi.

11. The incident of assault claimed to have occurred on 20.10.01 at about 9 P.M. A G.D. Entry No. 1106 dated 20.10.01 marked as Exhibit- 3 mentioned Biswanath Khanra, Sanjib Khanra, Sanjoy Khanra, Bela Khanra and Mitali Khanra to have assaulted the complainant concerning a dispute regarding purchase of a landed property.
12. The PW-1 during his evidence stated that the incident of assault was informed to the police station after the victim sustained injury. However, the police station did not take any steps and therefore at a belated stage the complaint was lodged. On 15.11.01 narrating the overt act of the accused persons to have inflicted injuries to the victims with specific description.
13. PW-2 in his evidence deposed that the appellant Sanjib had hit a blow to Sanat at his left ear. It was further stated that the accused came to the spot with torch, sticks, lathi etc. Biswanath hit Sujay on his head, chest, back side and Sanjay hit him with bricks. Injury report marked Exhibit 2 stated that no external injury was detected and the patient complained of pain and tenderness over scalp and abdomen. Complain of pain and tenderness over scalp and abdomen cannot be attributed to injury inflicted upon him as described by the prosecution witnesses as aforesaid with the help of the torch light, lathi etc. In absence of any external injury which should have been resulted if the person was hit by a torch light, lathi to have visibly left a mark if at all hit by the aforesaid articles.

14. The evidence of the doctor, i.e. PW-4 with regard to the Exhibit-2 cannot be sustained. During his cross-examination, PW-4 the doctor stated to have narrated the injury report without perusing the register. The PW-4 stated that the pain and tenderness was not always visible and the assault by torch, lathi etc. may not result in swelling or cut injury. He further stated during cross-examination that the injury no. 1 and no. 2 of Sankar Ghorui may be caused due to pressure against the rough wall. The injury sustained below the eye by Sankar Ghorui might be caused by dashing on the wall. The delay in filing the complaint had been explained due to the protracted puja vacation and also the G.D. Entry could have been kept in abeyance by the police from taking necessary action.
15. PW-3 during his cross-examination stated that he did not know whether the complainant and his brothers assaulted the accused persons on 20.10.2001. He did not receive any summons from the Court and had been brought before the Court by Sanat Ghorai. He further stated that there was hue and cry but nobody came to the spot which lasted for about 8 to 10 minutes. He further stated that the complainant did not receive any bleeding injury on the head and at the time of incident, there was nobody between the complainant and the accused persons. The deposition of PW-3 can be construed to be that of a tutored witness.
16. The gravity of the offence alleged to have been committed by the appellants lost its severity owing to the delay by the complainants to lodge the complaint. The inconclusive opinion of the doctor recording the injuries in the injury report was incoherent with the evidence of the prosecution

witnesses. The acrimonious relationship between the appellants and the complainant and the other victims can surely amplify the possibility of false implication. The offending weapons were not recovered.

17. In view of the above discussions, the judgment dated 19th July, 2013 passed by the Learned 2nd Additional District & Sessions Judge, at Howrah in Criminal Appeal No. 31 of 2010, whereby modified the judgment and order passed by the Learned Judicial Magistrate, 1st Court, at Uluberia, Howrah in connection with Case No. 347C of 2001 and convicted the present petitioners for commission of offences punishable under Sections 323/34 of the Indian Penal Code, 1860 is set aside.

18. Accordingly, the instant criminal revisional application being no. CRR 2674 of 2013 is allowed.

19. Accordingly, CRR 2674 of 2013 stands disposed of.

20. There is no order as to costs.

21. Let the copy of this judgment be sent down to the Learned Trial Court and the concerned police station as well for necessary action.

22. 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.)