

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

Present:

The Hon'ble Justice Tirthankar Ghosh

***C.R.A. 726 of 2019
with
CRAN 2 of 2020 (Old No. CRAN 576 of 2020)***

***Marjuban Sk. @ Hunda @ Marjuban
versus
The State of West Bengal & Anr.***

For the Appellant : Md. Sabir Ahmed,
Mr. T. Ahmed.

For the State : Mr. Debasish Roy, Ld. P.P.,
Mr. Arijit Ganguly,
Mr. Koushik Kundu.

Heard On : 18.07.2024.

Judgement On : 18-07-2024.

Tirthankar Ghosh, J. :

The present appeal has been preferred in connection with Sessions Trial No. XV (VIII) of 2017 corresponding to Sessions Case No. 18(07) of 2017 wherein the learned trial court being the learned Additional Sessions Judge, 2nd Court, Krishnagar, Nadia was pleased to hold the appellant guilty under Section 326 of the Indian Penal Code and

sentenced him to suffer rigorous imprisonment for a period of five years and to pay fine of Rs.20,000/-, in default to suffer rigorous imprisonment for a period of six months.

The genesis of the case relates to FIR being registered by Kaliganj Police Station Case No. 633 of 2016 dated 26.11.2016. The allegations therein are that one Lutfunnesa Bibi complained with the police station to the effect that she was married to the appellant 13 years ago and gave birth to two daughters and one son. After marriage, she was tortured physically and mentally in her matrimonial home and often her husband used to torture her continuously on the direction of her father-in-law and mother-in-law. Unable to bear such torture, her maternal uncle took her husband along with her children and herself to their village. However, her husband remained unchanged and on frivolous pretext, she was assaulted. Her husband/appellant on one occasion with the intention of killing her caused serious injury over her body with sharp weapon and ran away. Consequently she was seriously injured, sustaining injuries at her right hand and mouth. She went to Kaliganj Hospital and as her condition deteriorated, doctor referred her to Saktinagar Hospital at Krishnagar for better treatment. She was subsequently admitted at Blish Nursing Home, Kolkata. FIR was lodged at a point of time when she was under treatment.

Pursuant to such complaint being informed Kaliganj Police Station Case No. 633 of 2016 dated 26.11.2016 was registered for investigation under Sections 498A/326/307/34 of the Indian Penal Code against the appellant viz. Marjuban Sk., Suku @ Sukurali Sk. (father-in-law) and Abbajan Bibi (mother-in-law).

The investigating agency on conclusion of investigation submitted charge-sheet under Sections 498A/326/307/506/34 of the Indian Penal Code. The case was committed to the court of sessions and finally to the learned trial court being the learned Additional Sessions Judge, 2nd Court, Krishnagar, Nadia. The learned Additional Sessions Judge by an order dated 30.08.2017, framed charges against the appellant under Section 498A and Section 307 of the Indian Penal Code and also framed charge against Suku @ Sukurali Sk. and Abbajan Bibi under Section 498A of the Indian Penal Code.

The prosecution in order to prove its case relied upon the following eight witnesses :

PW-1 Lutfunnesa Bibi – complainant,

PW-2 Mamlot Sk. – uncle of the complainant,

PW-3 Hamidun Bibi – aunt of the complainant,

PW-4 Imran Mondal – brother of the complainant,

PW-5 Sahajan Sk. – neighbour of the complainant,

PW-6 Dr. Rahul Gupta

PW-7 Kabita Bibi – resident of the locality

PW-8 Nirmal Sen – Investigating Officer of the case.

On an assessment of the materials particularly the oral evidence as well as the documentary evidence so placed, the learned trial court was pleased to acquit the accused persons viz. Suku @ Sukurali Sk. and Abbajan Bibi holding them not guilty for offence under Section 498A of the Indian Penal Code and on the other hand, convicted the appellant under Section 326 of the Indian Penal Code, consequently, sentencing him as stated above.

I have considered the evidence of the complainant and the other witnesses. In the complaint itself, the complainant stated that she along with her husband and children had been taken by her maternal uncle to his house. So far as the issue relating to infliction of injury is concerned, there has been a consistent version and a ring of truth appearing from the witnesses. Further PW-6, Dr. Rahul Gupta, on his examination observed as follows :-

“On examination I found :

- 1) Cut injury right shoulder muscle deep 5 Cm x 1.5 Cm x 2 Cm.*
- 2) Cut injury right arm muscle deep 8 Cm x 3 Cm x 3 Cm.*
- 3) Cut injury face extending from left cheek to root of the nose 6 Cm x 2.5 Cm x 2 Cm.*

Stretch was done on the injury. Patient was given fluid and other treatment including the requisition of blood. Patient had one bottle of blood of B+ as because she has bleeding from nose. I advise city scan of brain including consultation with the ENT surgeon Dr. K.N.Kapat. The report of the city scan normal and the patient was discharged on 09.11.2016.”

The lower court records reflect that the appellant was in custody for ninety days in connection with the instant case and pursuant to the order of conviction and sentence so passed by the learned trial court on 19.06.2018, he was taken into custody. The appellant was subsequently released on bail on 22.01.2021 by the appellate court. I have taken into account the period of detention suffered by the appellant in course of investigation and post conviction after the trial was over which is for a period of two years ten months. Having considered the detention already undergone by the appellant, I am of the view that although the guilt and the order of conviction cannot be interfered on the basis of the evidence. The same as such is affirmed.

However, having regard to the period of detention so suffered by the appellant, I am of the view that the sentence so imposed by the learned trial court is reduced to the period which has already been undergone by the appellant.

The appellant may be discharged from the bail bonds.

With the aforesaid observations, the appeal being CRA 726 of 2019 is partly allowed.

Pending connected application is consequently disposed of.

Department is directed to send back the lower court records immediately and communicate this order to the learned trial court.

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

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

(Tirthankar Ghosh, J.)

dc.