

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3412 of 2013

Sanat Kumar Ghorui

-vs-

Sanjib Khara @ Sanjib Kumar Khanrah & Ors.

For the Petitioner : Mr. D. P. Mitra

For the Opposite Parties : Mr. Arnab Chatterjee
Ms. Dhanasree Biswas
Ms. Poulami Bose

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 has been preferred against the judgment and order dated 19.07.2013 passed by the Learned Additional District Judge, 2nd Court at Howrah, District – Howrah, in Criminal Appeal No. 31 of 2010, modifying the quantum of sentence passed by the Learned Judicial Magistrate, 1st Court, at Uluberia, Howrah in connection with Complaint Case No. 347C of 2001 under Sections 323/144/34 of the Indian Penal Code.
2. One Sanat Kumar Ghorui lodged a written complaint before the Learned Sub-Divisional Judicial Magistrate, Uluberia to the effect that on 20.10.2001

at about 09.00 P.M., he and his brother was intercepted and assaulted by the accused/opposite parties.

3. It was further alleged in the said written complaint that petitioner and his elder brother who is also witness no. 1 in the said case, on the said date of incident while returning from Kulgachia Market, when they reached near the house of the accused persons near the Tulsiberia More the petitioner and his elder brother saw one of the accused namely Sanjib Khanra, alias Sanjib Kumar Khanrah who happens to be the accused no. 1 in the complaint case coming from the opposite direction towards the Kulgachia Market and then petitioner asked him why he and his other family members used filthy languages yesterday and petitioner requested the accused no. 1 Sanjib Khanra, alias Sanjib Kumar Khanrah to give up such habit and to deal a good behavior with them and not to repeat the same again, then the accused no. Sanjib Khanrah alias Sanjib Kumar Khanrah became furious and begun to utter silly words to complainant/appellant and his elder brother and at the same time the accused no. 1 Sanjib Khanrah alias Sanjib Kumar Khanrah exercised blows on the face, just below the left ear of petitioner for which he received pain and tenderness on his persons, then the elder brother of petitioner intercepted the accused no. 1 from such act and saved the complainant. Thereafter the accused no. 1 ran away to his house nearby and meanwhile other accused persons including both the accused/opposite parties mentioned herein above rushed to the place of occurrence forming an unlawful assembly armed with lathi, torch-light and bricks bats etc and they all began to assault petitioner and his elder brother. The accused no. 1

Sanjib Khanrah alias Sanjib Kumar Khanrah again hit them with fists and blows on his face, left ear, backside, chest and on different parts of the body for which they both received pain and tenderness and the accused no. 2 i.e. Biswanath Khanra hit them with torch light to their head and accused no. 3 i.e. 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 also 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 i.e. the complainant's elder brother fell down on the earth and then the accused no. 2 i.e. Biswanath Khara bite upon the right thigh and caused bleeding injury and the accused no. 4 and 5 in the complaint i.e. Rekha Khanra and Dipti Khanra put their hands to do away the life of the witness no. 1 i.e. the elder brother of petitioner 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 causing grievous injuries to them, for which they were immediately thereafter had to be treated in Uluberia Hospital. In such circumstances, the complaint case under Sections 323/144/34 of the Indian Penal Code had to be filed by the petitioner.

4. The Learned Sub-Divisional Judicial Magistrate, Uluberia on receipt of such written complaint from the said Sanat Kumar Ghorui was pleased to take cognizance on such complaint and issued process against the opposite parties forming subject matter of the case and registered as Case No. 347C of 2001.

5. Petitioner was examined as the witness for the prosecution in the case and pertaining to the offences under Sections 144/323/34 of the Indian Penal Code was only cogently proved by the evidence according to the Learned Magistrate and he was pleased to frame charges only under Sections 323/144/34 of the Indian Penal code against the opposite parties, who after hearing the contents thereof read over to them, pleaded 'not guilty' and claimed to be tried.
6. The prosecution examined six witnesses and adduced evidence in support of their case while the defence examined none other than pleading not guilty in examination under Section 313 of the Criminal Procedure Code and declined to adduce any evidence.
7. The Learned Judicial Magistrate 1st Court, Uluberia after perusal of the documentary and oral evidence and after hearing both sides passed judgment and order dated 26.04.2010 in Case NO. 347C of 2001 (T.R. No. 143 of 2001) thereby convicting all the 5 persons or the opposite parties for the offence under Sections 323/144/34 of the Indian Penal Code by making an observation that "the nature of the offence committed and its impact on the society I am of the view that if the convicts are not properly punished it would send a wrong message to the society in general and others may be tempted to commit such type of offence and ultimately and purpose of giving punishment would be frustrated" and sentenced them to suffer simple imprisonment for a term of one year for the offence under Section 144/34 of the Indian Penal Code and with simple imprisonment for a term of six

months for the offence punishable under Section 323/34 of the Indian Penal Code and also directed that the punishment will run concurrently.

8. Being aggrieved by and dissatisfied with the said judgment and order of conviction and sentence dated 26.04.2010 in Case No. 347C of 2001 (T.R. Case No. 143 of 2001), the accused/opposite parties preferred an appeal before the Learned Second Additional District Judge, Howrah, under Section 374 of the Code of Criminal Procedure, 1973 being registered as Criminal Appeal No. 31 of 2010 and upon hearing the parties and upon perusal of the records of the case, by judgment and order dated 19.07.2013, the Learned Judge was pleased to dispose of the said appeal of the opposite parties by recording an order of acquittal in favour of the appellant no. 4 i.e. Rakha Khanra and appellant no. 5 Dipti Khanra as per the said petition of appeal out of the 5 accused persons and pleased to pass an order modifying the quantum of sentence for the accused/opposite party no. 1, 2 and 3 herein setting aside the judgment and order of conviction and sentence dated 26.04.2010 passed by the Learned Judicial Magistrate, 1st Court, Uluberia discarding the prosecution case on the basis of some extraneous, non-existing and/or patently wrong considerations.

9. Learned Advocate for the petitioners submitted that –

- i. The defence had miserably failed to produce any witness or adduce any evidence in support of their case and prove their innocence and in that view of the matter, the Learned Court below have erred in law in modifying the quantum of punishment in the instant case.

- ii. The Learned Judge had erred in law in mechanically disposing of the appeal of the opposite parties without considering the fact that the judgment and order of conviction and sentence passed by the Learned Judicial Magistrate 1st Court, Uluberia was based on cogent evidence as adduced, and carefully considered by him and as such the judgment and order dated 19.07.2010 passed by Learned Additional District Judge, 2nd Court at Howrah, modifying the quantum of punishment passed by Learned Judicial Magistrate 1st Court, Uluberia, suffers from surmises, conjectures and sweeping observations to the utter prejudice of the petitioner in the absence of any materials and/or reasons.
- iii. The Learned Judge had erred in law in mechanically disposing of the appeal of the opposite parties by passing an order of acquittal in part and partly modifying the quantum of sentence without considering the fact that regard being had to the state of evidence in the instant case, the Learned Judge ought not to have recorded an order of acquittal nor modify the quantum of sentence in favour of the opposite parties.
- iv. The Learned Court below fell in error in giving major relevance to the only fact in acquitting the appellant no. 4 and 5 i.e Rekha Khanra and Dipti Khanra as per their petition of appeal, because of the fact that the complainant who was severely injured did not mention the names of the appellant no.4 and 5 to the Doctor and that had not been explained in the course of trial. As such minor omission in medical

evidence cannot be the ground particularly when the evidence of the victims did not suffer glaring infirmities, when the medical evidence was not found to be totally inconsistent with the ocular evidence on a given set of facts and also might be that the doctor committed mistake in noting the name of the accused persons or the complainant might forgot to mention the names of the other accused persons at that point of time when he was suffering from severe trauma due to the grave injuries inflicted on him by the accused persons and as such if they were not acquitted, then the question of dropping the charges against the other accused persons under section 144 of the Indian Penal Code due to want of ingredients as per the provisions of the said section would not have arisen.

- v. The Learned Judge has erred in law in mechanically disposing of the appeal of the opposite parties without considering the fact that the Learned Magistrate has very well read, interpreted and reported the evidence on record which have weighed heavily upon his mind at the time of passing of the judgment and order of conviction and sentence and in that view of the matter, the Learned Judge ought not to have modify the quantum of sentence setting aside the judgment and order of sentence passed by the Learned Magistrate.
- vi. The Learned Judge had erred in law in not considering the fact that regard being had to the state of evidence in the instant case, the Learned Magistrate have carefully recorded that the prosecution had

cogently proved the offences under Sections 323/144/34 of the Indian Penal Code.

- vii. The Learned Judge had proceeded entirely on the wrong basis that as the complainant did not disclose the names of the appellant no. 4 & 5 in the said appeal before the Doctor at the time of treatment immediately after the treatment and as the prosecution could not explain the same in the course of trial they are ought to be acquitted and as the number of accused persons dropped to 3 hence Section 144 of the Indian Penal Code against the accused should be dropped against the other accused persons which goes to show that the Learned Judge has neither perused the evidence on record nor has considered the prosecution case.
- viii. The Learned Judge had erred in law in not considering that no discrepancies in the statements of the complainant/prosecution witness no. 1 had been found in his examination-in-chief, cross-examination and in the petition of complaint. There had been no variance between the petition of complaint and the evidence of P.W. 1 which corroborated each other absolutely.
- ix. The Learned Court below had erred in law in not considering the fact that the P.W. - 2 was the person who was attacked and was tried to kill by the appellant no. 4 and 5 by pressing his neck which supported the prosecution case projected through the complainant.
- x. The Learned Court below had erred in law in failing to consider the vital pieces of evidence on record which, if considered, would have

proved the offences as alleged by petitioner and in that view of the matter, the impugned judgments and orders of the Learned Additional District Judge, 2nd Court at Howrah below are liable to be quashed and/or set aside.

- xi. All of the ingredients of the alleged offences having been proved by the prosecution against the opposite parties, the Learned Courts below ought not to have modified the quantum of the sentences given to the opposite parties.
- xii. The Learned Court below had failed to consider the evidence adduced by the prosecution which have proved beyond all doubts the guilt of the opposite parties in the instant case.
- xiii. The sentence imposed is too lenient.
- xiv. A gross failure and miscarriage of justice having been occasioned by the impugned judgment this Hon'ble Court should, in the interest of justice, interfere therewith.
- xv. The impugned Judgments and Orders are otherwise bad in law and the same are liable to be quashed and/or set aside.

10. Heard the submissions of the Learned Advocate for the opposite parties.

11. This Court has disposed of CRR 2674 of 2013 with its observations therein whereby the judgment and order 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 was set aside and the revisional application being CRR 2674 of 2013 had been allowed.

12. Under Such circumstances, the instant revisional application is dismissed.
13. The judgment passed in CRR 2674 of 2013 be made a part of the revisional application being CRR 3412 of 2013.
14. There is no order as to costs.
15. Let the copy of this judgment be sent down to the Learned Trial Court and the concerned police station for necessary action.
16. 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.)