

25.08.2025

Court No.655

DL/Item No.-4

[Milan/
Samarpita]

CRA 263 of 1999

In the matter of: **Sk. Lal Mahammad**

Ms. Manisha Ghosh (*Amicus Curiae*)

....for the Appellant

Mr. Avishek Sinha,
Mr. Parvej Anam

....for the State

(Dictated in Court)

1. The impugned judgment and order of conviction dated 27.07.1999 passed by the learned Additional Sessions Judge, 2nd Court Burdwan in connection with Sessions Trial No. 6 of 1999 arising out of Sessions Case No. 203 of 1995 is assailed in this appeal.
2. By passing the impugned judgment, this appellant was found guilty for commission of offence punishable under Section 323 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for six months.
3. Being aggrieved and dissatisfied with the said impugned judgment and order of conviction, the present appeal is preferred at the behest of the appellant.
4. In short campus the story of the prosecution is as follows-

“The instant case was started on the basis of a complaint lodged by one Sitala Bag before the Bhatar Police Station, stating interalia, that on 15.10.94 at 7 P.M. (evening) she went to fetch water from Bolgore Pond and at that time she saw the victim Sukumar Roy

was being assaulted by this appellant along with other accused person. It is said in the written complaint that the accused persons assaulted the victim on his head and the victim was found groaning in agony and pain and told his wife not to assault him and wanted water for her. But the wife of the victim instigated the accused persons i.e. Sheikh Lal and Soleman to assault Sukumar and those accused persons began to assault the victim by pressing his neck. It is further stated in the written complaint that at the time of incident Rupa Bag, Purnima Majhi, Sunita Majhi and many others rushed to the spot but the accused persons began to abuse the defacto complainant and the persons present there. This defacto complainant and other persons who were present at the spot at that point of time were threatened by the accused persons and as such, all of them left the place of occurrence. It is stated in the written complainant that due to the assault made upon the victim Sukumar by the accused Soleman and Sk. Lal he died and they were instigated by the wife of the victim namely, Rina Roy (other accused). Over the complaint made before the police station, a case being Bhatar P.S. Case No. 73/94 dated 16.10.94 under Section 302/109/34 of Indian Penal Code was started against the accused persons.”

5. After completion of investigation, police submitted charge-sheet against the accused persons under Sections 302/109/34 of Indian Penal Code.
6. Charge was framed by the Trial Court under Section 302/34 of Indian Penal Code.
7. In this case, 10 (ten) witnesses were cited by the side of the prosecution and documents were marked as exhibits. Neither any oral, nor any documentary evidence was adduced by the side of the prosecution.
8. Ms. Manisha Ghosh, learned Amicus Curiae for the appellant has said that the charge framed against the appellant is defective and as such, no conviction can be sustained on the basis of such defective charge. It is said by the learned Advocate that there are material discrepancies in the evidences of the prosecution witnesses and as such, their testimonies cannot be relied upon. It is further said that if the evidences adduced by PW1 and PW3 are taken together, then it do not constitute and establish any offence under Section 323 of the Indian Penal Code. The attention of this Court is drawn to the evidence of the PW10, autopsy surgeon which as per her submission does not support the prosecution case warranting conviction under Section 323 of the Indian Penal Code.
9. Ms. Ghosh further contended that the learned Trial Judge failed to evaluate the evidences of PWs 1, 3 and 4 and committed a mistake in arriving at the conclusion in the impugned judgment. It is said by the learned Advocate that

the order of conviction is based on surmises and conjectures and it is liable to be set aside. It is further said by the learned Advocate that the evidences of PW1 and PW3 are contrary to each other and is mutually destructive. It is said that PW1 in her evidence did not say regarding pressing of neck of the victim by the accused, whereas PW3 has stated that the accused Soleman pressed the neck of the victim Sukumar and the accused Sk. Lal gave the fists and blows to the victim. It is said that PW1 was not examined by the police and this witness (PW1) is completely silent that how and when the victim died because this witness was not present in the house of the victim at the time of his murder. So, it is said that the impugned judgment and order of conviction passed by the learned Trial Court may be set aside.

10. Mr. Avishek Sinha, learned Advocate for the State said that there is nothing material in the record for which the impugned judgment and order of conviction may be interfered with. It is said by the learned Advocate that all the witnesses cited by the prosecution corroborates the contention of the written complaint. The attention of this Court is drawn by the learned Advocate to the evidences adduced by PW1 and PW3 as well as to the deposition of PW10 (autopsy surgeon). It is contended by the learned Advocate that it would appear from the statements of these witnesses that the victim was assaulted by this appellant and other accused persons. So, it is said that the impugned

judgment and order of conviction is to be upheld and the appeal preferred by the appellant challenging the impugned judgment may be dismissed.

11. I have considered the rival submissions advanced by both the parties and have consulted with all the materials gathered in the record.
12. PW1, Smt. Sitala Bag/defacto complainant has stated in her evidence that on the relevant date and time when she went to the bank for bringing water then she heard a hue and cry from the house of the victim Sukumar and when she went to his house she found that this appellant along with other accused persons were assaulting the victim Sukumar in the veranda of his house. It is said by this witness that she raised alarm and hearing her alarm PW4 Rupa Bag and PW3 Purnima Majhi came to the place of occurrence but as this appellant and the other accused Soleman abused them with filthy language and also threatened them for dire consequences they left the place and on the next morning they came to know that the victim died. This witness lodged the written complaint over that incident which is marked as exhibit in this case. So, this witness is the witness to the assault made by this appellant and his associates upon the victim Sukumar. In cross-examination, this witness said that she could not say when and how the victim died as she was not present in the house of the victim during his murder.
13. PW3, Purnima Majhi who was present at the place of occurrence on the relevant date and time along with PW1.

This witness said in his evidence that this appellant Sk. Lal gave fists and blows to the victim and the other accused Soleman pressed the neck of Sukumar (victim). It is said by this witness in the same line of PW1 that she left the place as the accused persons forced them to leave. This PW3 also stated in cross-examination that she did not see the murder of the victim and further said that on the date of occurrence one Adhir Mondal came to the house of Sukumar and he might have some role in the murder of Sukumar. So, this witness is the witness to the assault made by the appellant and other accused person upon the victim.

14. PW5, Manu Kumar Roy who is the father of the victim has stated in his evidence that the relation in between him and the victim was not good and he heard about the murder of Sukumar in the morning. It is said by this witness that he was reported that his son (Sukumar) was assaulted by this appellant and other accused person in presence of the wife of the victim. So, this witness is not the witness to the assault allegedly made by the accused persons and what he stated before this Court was hearsay.
15. PW6, Mr. Amir Ali who is the neighbour of the victim Sukumar has stated in his evidence that he came to know about the incident from PW1 and it is said by this witness that he heard that the appellant along with other accused person Soleman and the wife of victim assaulted Sukumar. It is said by this witness that during the absence of the victim in his house, this appellant along with other accused used to

visit the house of the victim and there was illicit connection between the wife of the victim and the accused persons including this appellant. This witness is also not the witness to the incident.

16. PW10, Dr. Saibal Gupta, autopsy surgeon deposed in this case and proved the post-mortem report which is marked as Exhibit-7 in this case. In his opinion, death of the victim was made due to effect and manual strangulation (throttling) ante-mortem and homicidal in nature. In his evidence, PW10 described the injuries as sustained by the victim. It is further said by this PW10 that the injuries no. 4, 5 and 6 which he has stated in his deposition might be caused by close fists.
17. So, in this case PW1 and PW3 are the witnesses to the incident regarding assault made by the accused persons upon the victim. PW5 and PW6 are the witnesses who heard the incident from the mouth of others.
18. PW9 is the Investigating Officer who after completion of the investigation submitted charge-sheet against all the accused persons.
19. The deposition of PW1 and PW3 assumes great significance in the present case. A careful scrutiny of their testimonies makes it abundantly clear that both these witnesses are direct, natural and trustworthy eye-witnesses to the occurrence of assault committed by the appellant in concert with other accused persons upon the victim. Their evidences, when read conjointly, present a coherent and consistent

narrative of the incident without any material contradiction or embellishment.

20. PW1, in his deposition, has categorically stated that he had witnessed the assault upon Sukumar Roy at the relevant place and time. She described in clear terms the role played by the appellant and the manner in which the other co-accused persons had joined him in assaulting the victim. Her version is not only consistent but also stands corroborated by the deposition of PW3, who, too, deposed that she was present at the scene and had seen the appellant along with the other accused persons were mercilessly assaulting the victim. Both the witnesses have withstood the test of cross-examination without their credibility being shaken in any material particular.
21. The testimony of PW1 and PW3 bears the stamp of truth, being spontaneous and natural, untainted by exaggeration or any ulterior motive. There is nothing on record to suggest that these witnesses bore any grudge against the appellant or the other accused persons so as to falsely implicate them. On the contrary, their depositions appear to be a straight forward account of the incident as perceived by them in their own presence. The consistency between their statements, coupled with the absence of any material contradiction, strongly enhances their reliability.
22. It is a settled proposition of law that when the evidence of eye-witnesses is found to be cogent, trustworthy and inspires confidence, conviction can be based on such evidence even

without further corroboration. In the present case, PW1 and PW3 are natural witnesses whose presences at the scene of occurrence have not been disputed. Their accounts of the assault on the victim, Sukumar Roy, by the appellant along with the other accused persons, being clear, cogent and consistent, leaves no room for doubt.

23. Therefore, this Court finds no reason to discard their testimonies, rather, the manner in which PW1 and PW3 have narrated the incident inspires confidence of the Court and serves to prove beyond reasonable doubt that the appellant, in active participation with the other accused persons, committed the assault upon the victim. However, it is equally important to note that neither PW1 nor PW3 has claimed to be the witness to the murder of the victim and admitted that they did not see the death of victim taking place in their presence. On the contrary, they have said that they heard about the death of victim on the following morning.
24. The medical evidence on record as well as from the deposition given by PW10 (Doctor) and the post mortem report support the version of PW1 and PW3 regarding assault upon the victim. PW10, the Doctor confirmed the presence of ante mortem injuries on the body of the deceased which have been described by the eye witness. The medical evidence adduced in this case provides vital corroboration to the ocular version of PW1 and PW3. Both these witnesses have consistently deposed that the appellant, along with the other accused persons, assaulted

the victim, Sukumar Roy, at the relevant time and place. Their versions of the incident are not only clear and natural but also find complete support from the deposition of PW10, the Doctor who conducted the post-mortem examination on the body of the deceased, as well as from the post-mortem report prepared by him.

25. Once the medical evidence is brought on record and stands duly supported by the deposition of the prosecution witnesses, it assumes great probative value. Such medical evidence, being the opinion of an expert, lends substantial corroboration to the ocular testimony and cannot be lightly brushed aside. When the post-mortem report, injury report, or the testimony of the medical officer (PW10) in the present case establishes the existence of ante-mortem injuries and the nature of assault upon the victim, those circumstances operate as incriminating material against the accused.
26. At this stage, the duty shifts to the accused under Section 313 of the Code of Criminal Procedure. The scope of examination under Section 313 CrPC is not a mere procedural formality; rather, it provides an opportunity to the accused to personally explain the incriminating circumstances appearing in the evidence against him. The provision is intended to ensure fairness by putting the accused on notice about what has come against him during trial and to give him a chance to rebut, clarify, or present his version.

27. However, when the accused, despite such opportunity, chooses either to remain silent or furnishes an evasive, vague, or false reply, the Court is not bound to ignore the incriminating evidence which remains unrebutted. On the contrary, in such a situation, the Court is entitled to draw an adverse inference against the accused. Silence or prevarication on the part of the accused, when faced with clear and direct incriminating circumstances emerging from reliable medical and ocular evidence, strengthens the prosecution's case and weakens the defence.
28. PW1 stated that upon witnessing such a brutal incident, her immediate reaction was to raise alarm so that nearby persons could come forward to rescue the victim. However, the accused persons, in order to prevent her from disclosing the incident, criminally intimidated her with threats. Being woman and apprehending imminent danger to her own life and safety, PW1 understandably left the place of occurrence out of fear. Her conduct in withdrawing from the spot after raising alarm and upon being threatened is not only natural but also consistent with human probabilities in such circumstances.
29. The Court cannot lose sight of the fact that a witness's credibility is often tested on the touchstone of natural human conduct. In this context, the testimonies of PW1 and PW3 inspire confidence because their narrations reflect a spontaneous reaction of a helpless eyewitness who, though willing to raise their voice, was compelled to retreat owing to

threats issued by the assailants. Far from discrediting their evidences, this circumstance lends assurance to the veracity of their version.

30. PW3 is the other witness to the assault made by the accused persons upon the victim. She said in her deposition that this accused pressed the neck of the victim and the other accused person gave fists and blows to the victim. So, this witness also had seen that the victim sustained injuries by the assault of the appellant or at otherwise being present throughout the occurrence when the victim was being assaulted by the accused persons. The testimony of PW3 is significant inasmuch as it specifically describes the overt acts attributed to each of the accused persons. Her evidence is not vague or general in nature; rather, it assigns definite roles stating that one accused was pressing the neck of the victim and the other accused was delivering fists and blows. This level of detail in narration lends assurance to the credibility of PW3 and rules out the possibility of his account being an exaggerated or concocted version.
31. In other words, even though the prosecution evidence falls short of conclusively proving the offence of murder under Section 302 IPC, it does firmly establish the participation of the accused/appellant in committing assault that resulted in injuries to the victim. Hence, while they cannot be treated as eyewitnesses to the act of murder, PW1 and PW3 are reliable witnesses to the assault and their evidence squarely

supports the conviction of the accused for the offence of voluntarily causing hurt under Section 323 IPC.

32. In the circumstances, the learned Trial Court was justified in recording the conviction of the appellant under Section 323 of Indian Penal Code. The findings of the learned Trial Court of the guilt of the accused are well supported by ocular and medical evidence and no interference is warranted of the conviction so passed. I do not intend disturb the conviction in respect of the offence Under Section 323 of the Indian Penal Code.
33. The Trial Court after marshalling the evidence has recorded the conviction under section 323 of IPC and awarded sentence of rigorous imprisonment for 6 months.
34. The incident took place on 15.10.1994 i.e. about 30 years ago. It appears that appellant was throughout on the bail. The Constitution of India, under Article 21, guarantees the right to life and personal liberty, which includes the right to a speedy trial. Long and unjustified delay in the disposal of criminal cases, especially where the accused is not responsible for the delay should be a valid ground for modifying sentences.
35. When I examine the facts of the case at hand, I find that Firstly, the incident is of the year 1994 Secondly, this case is pending for about last 30 years; Thirdly, the appellant has now reached to the age of old; Fourthly, he surrendered before the Trial Court on 30.11.1994 and was released on bail on 28.02.1995; Fifthly, he did not indulge in any

criminal activities nor breached any conditions of the bail granted to him.

36. The aforesaid reason which, in my view, is the special reason and accordingly alter the jail sentence imposed on the appellant will be reduced to what is already undergone by the appellant. In other words, this Court alters the jail sentence of the appellant and award him "what is already undergone by him".
37. The appellant is, therefore, now not required to undergo any more jail sentence.
38. In view of the foregoing discussion, the appeal succeeds and is partly allowed.
39. This appellant is on bail; he is discharged from his bail bond and set at liberty if he is not wanted in connection with any other case.
40. In view of provision of Section 437A of Cr.P.C. the appellant shall have to execute bail bonds with sureties and such bail bonds shall be in force for six months.
41. Let a copy of this order along with Trial Court Record be sent down to the Trial Court immediately.
42. Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Prasenjit Biswas, J.)