

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 427 of 2001

Kamal Kayal

-Vs-

The State of West Bengal & Ors.

For the Appellant : Mr. Anirban Dutta
Mr. Rohit Chowdhury

For the State : Mr. Avishek Sinha

Heard on : 17.01.2024, 19.02.2024, 05.03.2024,
22.04.2024, 14.06.2024, 12.07.2024,
18.07.2025

Judgment on : 24.10.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 07.09.2001 passed by the Learned Sessions Judge, 8th Bench, City Sessions Court, Calcutta in connection with the Sessions Case No.32 of 1999 arising out of Sessions Trial No.3 of September, 2000 convicting the appellant under Section 333 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for 6 months and to pay a fine of Rs.20,000/- and in default to further rigorous imprisonment for 2 months and fine be deposited to the Trial Court on or before expiry of 3 weeks from the date of order and the

Trial Court do arrange to pay the said compensation to the victim with 15 days from the date of deposit of such fine.

2. The prosecution case precisely stated on 09.12.1998 a Traffic Constable was on duty at Beat No.52 (Theatre Road Rowdon Street Crossing) from 11:00 hrs., to till 17:00 hrs. At about 15:25 hrs., the said constable found a motor cycle coming in high speed along with the Rowdon Street violating the one way system which North to South while the motor cyclist was coming from South to North. As such he tried to stop him but the appellant dodged him and threatened to come back again for teaching him a good lesson. At about 16:35 hrs., the motor cyclist came back leaving his motor cycle elsewhere. Immediately, the appellant pounced on the traffic constable and started assaulting him with his Helmet. Thereafter, the appellant caught hold of the victim right hand and twisted it with all his force and hit on the hand with his Helmet. The victim tried to save himself but could not succeed, then some local persons rescued him from his clutch and handed over the appellant to the traffic patrolling sergeant.
3. Based on the aforesaid complaint, the Park Street Police Station Case No.727 dated 09.12.1998 was initiated for investigation.
4. After completion of investigation, the police submitted charge-sheet against the appellant under Section 333 of the Indian Penal Code to which he pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 10 witnesses and exhibited certain documents while the defence had examined none.

6. The Learned Advocate representing the appellant submitted as follows:-

- i. There being no contemporaneous records before the trial court, showing that the PW-1, a police sergeant was on duty at the place of occurrence, the evidence of PW-1 had no credential.
- ii. Admittedly a pocket book was maintained by the Traffic Constable and number of vehicles was noted there on which violates traffic rules and no such pocket book being produced before the Trial Court, as such it was never proved that the PW-2 was allegedly assaulted by the appellant with intent to deter or prevent him being a public servant from lawful discharging his duty as such the conviction of the appellant liable to be set aside.
- iii. The evidence of the PW-2 was wholly unworthy of credit inasmuch as the said witness failed to disclose the details as regards his admission at the hospital and about his treatment as well as who was the Officer-in-Charge of South Division, how many constables were posted at the traffic point of Shakespeare Sarani and Rowdon Street Crossing, who allotted him duties on that day.
- iv. PW-2 in his statement recorded under Section 161 of the Code of Criminal Procedure not having mentioned the place of occurrence was the crossing of Shakespeare Sarani and Rowdon Street and as regards the manner of assault and the nature of injury his deposition as regards to the same had no evidentiary value and could not be acted upon to record a conviction.

- v. The identification of the appellant as the alleged accused by the PW-3 and PW-4 in the Court without a prior identification at the T.I. Parade had no evidentiary value and could not be acted upon to record a conviction against any person.
- vi. PW-3 not having disclosed to the police rendered in his statement under Section 161 of the Code of Criminal Procedure that he identified the accused who assaulted the PW-2 his alleged identification of the PW-2 had no evidentiary value.
- vii. PW-4 in his statement recorded under Section 161 of the Code of Criminal Procedure not having disclosed the alleged facts implicating the appellant in the commission of the alleged offence, his testimony as regards to the same during the trial had no evidentiary value and could not be acted upon to record a conviction.
- viii. The Exbt.-2 being the report of treatment of PW-2 by the PW-7, a medical officer attached to the Emergency Department, National Medical College and Hospital, not having contained any date had no evidentiary value and the impugned order of conviction of the appellant under Section 333 of the Indian Penal Code being based thereupon was liable to be set aside.
- ix. The X-ray plate on the basis of which PW-7 opined about the fracture on the left hand of the PW-2 not being exhibited during the trial, the opinion of the PW-7 based thereupon was of no evidentiary value and could not be acted upon to record a conviction under Section 333 of the Indian Penal Code.

- x. The Exbt.-5/3, the X-ray requisition slip issued by the Calcutta Police Hospital, where the injured PW-2 was medically treated required for X-ray of Chest, the X-ray plates relating to the patient, PW-2, dated 15.12.1999 and 27.10.1999 had not authenticity.
- xi. According to the PW-9, the PW-2 was under his treatment from 22.12.98 to 01.02.99 at Calcutta Police Hospital as such any X-ray of the patient done before 22.12.98 could not be said to have been done under his advice.

7. Learned Advocate representing the appellant further submitted that :-

- i. Conviction under Section 333 of the Indian Penal Code - a non sequitur:-

The essential ingredients of an offence punishable under Section 333 of the IPC which the prosecution was obligated to prove against the appellant are furnished below:-

- a) The accused has voluntarily caused grievous hurt the victim;
- b) The victim hurt was a public servant in the discharge of his duty as such public servant;
- c) The grievous hurt was caused-
 - i. when the public servant was discharging his duties as such public servant;
 - ii. with the intention of preventing or deterring him from discharging his duties as such public servant;

- iii. in consequence of anything done by the public servant in the lawful exercise of his function as such public servant;

Tersely saying, there has to be a finding in the impugned Judgment and Order beyond reasonable doubt that there was a public servant and such public servant was on duty and was deterred from his duty causing grievous hurt.

Therefore, the facts which were required to be established beyond reasonable doubt before a Court of law by a prosecution is the fact that there was grievous hurt on the public servant deterring him from discharging his duty. In terms of criminal jurisprudence mere vague conjectures or presumption cannot substitute or replace any cogent evidence which is required to prove the said ingredient as stated above beyond reasonable doubt to bring home the charges under Section 333 of the I.P.C.

8. The Learned Advocate representing the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses supported by the medical evidence and the appeal shall be dismissed.

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

- i. PW-1, a traffic sergeant posted on 19th December, 1998 stated upon hearing a unusual commotion near the crossing of Rowdan Street and Shakespeare Sarani. He hastened to the spot and observed a crowd of local persons surrounding an individual by the traffic constable on

duty sat on the pavement, clutching his left arm and weeping in acute pain. PW-1 rescued both the accused/appellant and the injured constable from the agitated gathering and escorted them to the police station.

- ii. During cross-examination PW-1 conceded although pocket note book was maintained by the constable, no such document has been seized or produced. He admitted to not having recorded any statement of local witnesses. He denied suggestions that he had not been present at the place of occurrence or the incident never transpired.
- iii. PW-2 deposed to have on duty regulating traffic. When he noticed a motorcycle approaching from north towards south in violation of traffic rules on signaling the motorcyclist to spot, the latter did not comply and rebounded from behind towards him aggressively and struck him with a helmet, causing him to fall on the road incurring pain. Locals gathered and intervened. Subsequently, the traffic sergeant reached the spot and transmitted him to Park Street Police Station and thereafter to Calcutta National Medical College.
- iv. PW-2 asserted his left arm had suffered fracture for which he was admitted at Calcutta Police Hospital from 22nd December, 1998 to 1st February, 1999.
- v. During cross-examination PW-2 stated of not recording general diary entry and could not produce documentary proof of being allotted duty specifically at the spot on the date of occurrence. He admitted of his failure to disclose certain material details to the Investigating Officer

and denied suggestions of non-occurrence of the incident sustaining assault by him.

- vi. PW-3, a resident near the place of occurrence, corroborated prosecution version by stating of having seen a motorcycle approaching from the southern side when the constable signaled it to stop. The motorcyclist parked the vehicle at a distance, returned towards the constable with a helmet in hand and assaulted him causing the constable to fall. PW-3 further stated to have seen PW-1 to intervened thereafter.
- vii. During cross-examination PW-3 denied of any falsity in his deposition and rejected suggestions to have identify the accused at the behest of the police or that his testimony was fabricated.
- viii. PW-4 deposed to have engaged in collecting parking fees at the relevant location. He observed the accused violating the traffic rules and proceed on which the constable had signaled him to stop. The accused instantly advanced ahead parked the motorcycle at a distance and returned towards the constable with a helmet. PW-4 testified to have witnessed the accused/appellant assaulted the constable with a helmet causing him to fall. A crowd assembled followed by arrival of sergeant who escorted both the injured and the appellant to the police station. PW-4's statement was recorded by the police. PW-4 confirmed the motorcycle and two helmets were seized in his presence and he signed the seizure-list.

- ix. PW-5 stated to be a passersby who witnessed the commotion and volunteered to sign the seizure-list being asked by the police. PW-5 identified one motorcycle and two helmets seized under Exhibit 1/2.
- x. PW-6 deposed to be a street vendor who had witnessed the motorcyclist assaulting the constable with his helmet and also observed PW-1 arriving at the spot thereafter.
- xi. PW-7 deposed as the Medical Officer of National Medical College and Hospital at 3.30 p.m. on the date of incident and was examined at 4.15 p.m. The victim had stated to PW-7 that a person in violation of the traffic rules was approaching on a motorcycle who was obstructed by the victim and the accused/appellant assaulted him with his helmet without any extreme injuries apart from swelling and painful movement in the middle of the left arm. X-ray revealed a fracture in the left humerus. The victim was sent to the Casualty Operation Theatre and Orthopaedic Surgeon attended the patient. The X-ray plates were supplied to the patient party. PW-7 submitted a handwritten note marked as Exhibit – 2.
- xii. PW-7 during cross-examination stated to have given details about symptoms which occurred during fracture but did not treat the victim further.
- xiii. PW-8 stated to have handed over 15 bed head tickets pertaining to the victim to the Investigating Officer which were formally seized and marked as Exhibit 3 without any personal knowledge regarding preparation of the same.

- xiv. PW-9 being a Orthopaedic Surgeon at the Calcutta Police Hospital treated the victim from 22nd December, 1998 till 1st February, 1999. He confirmed the victim to have sustained fracture and the anesthesia manipulation of the fracture was performed on December 10, 1998 thereafter, on December 12, 1998 X-ray of the left arm was conducted and the X-ray plates were marked as Exhibit – 6 series by 4 prescriptions written by him were marked by Exhibit -5 series.
- xv. During cross-examination PW-9 stated certain X-ray plates bore date 1st March, 1999 and did not mention the patient's name. He clarified that the X-ray requisition slip, however, bore his advice of X-ray of his chest and arm. He denied the suggestion that the X-ray was not done under his instructions.
- xvi. PW-10 stated to have received information around 4 pm regarding a traffic constable being assaulted. On reaching the spot he could not find any person. Upon inquiry from the locals, he learnt both the injured constable and the appellant had been escorted to Park Street Police Station by PW-1. PW-10 thereafter visited the hospital regarding the statement of the victim in presence of the Medical Officer and thereafter referred him to Calcutta Police Hospital. PW-10 seized the motorcycle under Exhibit – 1 and registered FIR marked Exhibit – 6. He had further arrested accused/appellant on December 15, 1998 and seized the bed head tickets apart from collecting medical papers relating to the treatment of the victim.

- xvii. During his cross-examination PW-10 admitted to have not seized any X-ray plates though he had learnt about the X-ray done on the victim. PW-10 had collected the X-ray report but not the plates. PW-10 had not recorded the statement of the Medical Officer of Calcutta Police Hospital nor sought for a prayer to hold Test Identification Parade for identification of helmets. PW-10 admitted the fact that the victim had not stated to him of being on duty on the date of incident.
10. The identity and status of the victim being PW-2 being a traffic constable could not be denied or disproved by the defence. The non-production of G.D. Entry or the traffic note book, the lapses on the part of the prosecution could not be fatal or frustrate the case of the prosecution in presence of other trustworthy, credible evidence. The testimonies of the prosecution witnesses being PW-3, PW-4, PW-5 and PW-6 could not be fabricated or concocted as they had individually witnessed the appellant to proceed in violation of traffic rules and on a signal by the victim constable halted in his motion, rebounded and hit the victim with his helmet without any altercation or instigation.
11. The Medical Report corroborated the oral evidence as far as the victim to have sustained injuries in his left arm and being hospitalized. The seizure of the motorcycle as well as the helmet endorsed by the seizure witness strengthened the prosecution case.
12. Under such facts and circumstances, the reasons cited by the Learned Trial Judge in the conviction imposed upon the appellant through the impugned

judgment and order is not interfered with. However, the period of sentence is modified to the extent of imprisonment undergone by the appellant.

13. Accordingly, the instant Criminal Appeal being CRA 427 of 2001 is disposed of.

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

15. 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.)