

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE PARTHA SARATHI SEN

C.R.A. No. 526 of 2005

Ajit Majhi Gope & Anr.

-Versus-

The State of West Bengal

For the appellant: **Mr. Souryadeep Ghosh, Adv.,**
 Mr. Jyotirmoy Talukdar, Adv.

For the respondent/State: **Ms. Faria Hossain, APP,**
 Ms. Suparna Chatterjee, Adv.

Last Heard on **:** **17.02.2025**

Judgment on **:** **19.02.2025**

PARTHA SARATHI SEN, J. : -

1. In this appeal the judgement of conviction dated 20.07.2005 and the order of sentence dated 21.07.2005 as passed by the learned Additional Sessions Judge, Fast Track Court (IV), Raghunathpur, District Purulia in ST-3(9)03 is assailed. By the said judgement the learned trial court found one Ajit Majhi Gope and Dhiren Majhi Gope guilty of the charges under Sections 307/34 IPC and thus sentenced them to suffer RI for six years each and to pay a fine of Rs. 5000/- each id to suffer RI for one year each. The convicts felt aggrieved and thus preferred the instant appeal.

2. For effective adjudication of the instant appeal the facts leading to initiation of the aforesaid sessions trial is required to be dealt with in a nut shell and those are stated hereinbelow.

3. One Mihir Majhi Gope(hereinafter referred to as the informant) filed a petition under Section 156(3) CrPC (hereinafter referred to as the 'said petition' in short) against one Ajit Majhi, one Dhiren Majhi and one Satyabati Majhi stating inter alia that on 17.05.1997 at about 3:30 pm while the informant and his brother, one Kalachand were plastering their outer wall adjoining to Kuli Road, the said three accused persons raised objection and all on a sudden accused Satyabati caught hold of the testicles of Kalachand to which Kalachand raised alarm and hearing such alarm his father Sridam came to the P.O . It has been stated further in the said petition that soon thereafter accused Dhiren assaulted the said Sridam on his right shoulder by an iron rod while the other accused assaulted the said Sridam on his head by an axe with an intention to murder him. It is the further case of the informant that on account of such assault Sridam fell down on the earth with severe bleeding injuries. One Sanjoy intervened for separating the parties when one Khudiram assaulted the said Sanjoy who is the brother of the said Sridam by lathi. It has been stated further in the said petition that the accused Dhiren also assaulted Suvadra Majhi Gope who is the wife of Sanjoy.

4. It is the further case of the informant that the said accused persons as a safety valve lodged an information at Adra I/C and in course of investigation one Labu Majhi Gope, one Sanjoy Majhi Gope and one Sridam Majhi Gope were arrested. It has been disclosed further in the said petition that at the time of the filing of the said petition the said

Labu Majhi was released on bail while the other two accused persons of the said counter case were in custody.

5. It is the further case of the informant that when the injured persons of the aforementioned incident approached the I/C of the Adra P.S he did not lodge their complaint and on the contrary the said I/C asked the victims that they would take care of their grievances and ultimately did nothing. Finding no other alternative the informant thus filed the said petition under Section 156(3) CrPC in the court of learned Sub-divisional Judicial Magistrate at Raghunathpur, District Purulia on 07.07.1997 which was forwarded to the O/C Kashipur P.S for causing investigation treating the said petition as an FIR. On the basis of the said petition Kashipur P.S case no.77 of 1997 dated 22.08.1997 was started.

6. Investigation was taken up and on completion of the same charge sheet was submitted under Sections 341/323/324/325/34 IPC against the accused persons. After commitment and transfer the learned trial court on 16.09.2003 considered the charges against the accused persons and on consideration of the entire materials as placed before him framed charges under Sections 307/34 IPC against the accused persons. At the time of framing of the charge the accused persons pleaded their innocence and claimed to be tried and thus the said trial proceeded.

7. From the trial court record it reveals that in order to bring home the charges as framed against the accused persons the prosecution has examined 9 witnesses in all and several documents have been exhibited on their behalf. Trial court record further reveals that on behalf of the

defence no evidence was adduced however, from the trend of cross-examination of the prosecution witnesses and the answers as given by the accused in course of their respective examinations under Section 313 CrPC it reveals that the defence case is based on clear denial and false implication.

8. In course of his argument Mr. Ghosh, learned advocate duly assisted by Mr. Talukdar, learned advocate at the very outset draws attention of this Court to the petition under Section 156(3) CrPC as filed before the learned SDJM at Raghunathpur. It is contended that within the four corners of the said petition there is no proper explanation on the part of the informant with regard to the 50 days delay in lodging the FIR. Drawing attention to paragraph nos. 3 and 4 of the said petition it is further submitted on behalf of the appellant that no cogent explanation is also forthcoming from the side of the prosecution or from the informant as to why they did not approach the jurisdictional S.P at the earliest opportunity in terms of the provisions of Section 154(3) CrPC especially when it is the case of the informant that the jurisdictional I/C was reluctant to lodge an FIR on the basis of the complain of the alleged victims of the alleged incident.

9. Drawing attention to the cross-examination of PW2 it is submitted by Mr. Ghosh that the version of the said PW2 is contrary to his version as made in the said petition inasmuch as in his cross-examination PW2 categorically stated that he could not say as to whether his father Sridam was arrested by police or not though in the said petition it has been

stated by PW2 that the male injured persons of the alleged incident were in judicial custody. It is thus submitted by Mr. Ghosh that PW2 being an informant is not a truthful witness.

10. Drawing further attention of this Court to the cross-examination of PW2 it is submitted by Mr. Ghosh that the said PW2 testified that he made no representation to SDPO or S.P for not starting their case by Adra I/C which raises a serious question with regard to the genuineness of the incident as mentioned in the said petition.

11. Drawing attention to the testimony of PW3 it is further argued on behalf of the appellants that it would reveal from his cross-examination that he never met the police in connection with the said case and therefore his evidence is of no consequence since he was not previously examined by the IO. It is further argued by Mr. Ghosh that PW3 is also not a truthful witness inasmuch as there lies discrepancy with regard to the mode and manner of assault by the accused persons upon the person of the alleged victim Sridam. Drawing attention to the cross-examination of PW4 Mr. Ghosh further submits that that said PW4 (Sridam) is also not a truthful witness since in his cross-examination he had denied that he was in jail at the time of the filing of the said petition while it is the case of the informant that all the victims of the said case were at that material time in judicial custody. It is further submitted that though according to the said petition the alleged incident occurred at 3:30 pm, PW4 i.e. the alleged victim testified that he reached Adra I/C at 7:30 am which also

raises a serious doubt with regard to the veracity of the depositions as adduced by PW4.

12. It is further submitted by Mr. Ghosh that PW6 is also not a truthful witness inasmuch as in his cross-examination he stated that on the relevant day he visited the local P.S at 4 p.m whereas from the said petition it would reveal that the alleged incident occurred at 3:30 pm. It is thus submitted by Mr. Ghosh that the time gap between the occurrence of the alleged incident and reaching at the P.S cannot be so small. In this regard Mr. Ghosh further submits that all the private persons to the said session trial are interested witnesses and no explanation is forthcoming from the side of the prosecution as to what prevented them from citing any independent witnesses with regard to the alleged incident though according to the prosecution the alleged incident occurred in broad day light and therefore the chance of getting independent witnesses like co-villagers are not bleak inasmuch as PW5 in his cross-examination testified that on hearing alarm of the victims of the alleged incident the villagers came to the P.O.

13. In his next limb of submission Mr. Ghosh contended that both PW8 and PW9 being the medical officers of Purulia Sadar Hospital in their respective cross-examinations testified that the injuries suffered by Sridam may be caused due to fall on a hard and blunt object. Drawing attention to the evidence to PW7/I.O it is contended on behalf of the appellant that the investigation as carried out by the IO is merely a paper work since it reveals from his cross-examination that he made no attempt

to draw the sketch map of the P.O and examine the relevant witnesses and even then he submitted the charge sheet.

14. Mr. Ghosh thus submits that the learned trial court while passing the impugned judgement failed to visualize the aforementioned contradiction and/or omission in the evidence of the prosecution witnesses. He further argues that the learned trial court has also failed to visualize that the investigation as has been done by the PW7 is perfunctory one. Mr. Ghosh thus submits that it is a fit case for allowing the instant appeal.

15. Per contra Ms. Faria Hossain, learned Additional Public Prosecutor for the State submits before this Court that on careful scrutiny of the said petition it would reveal that the informant had assigned sufficient reason for delay in lodging of the FIR and thus the same should not be disbelieved. It is further submitted by Ms. Hossain that in his deposition PW2 testified in the same line as has been stated by him in the said petition. It is further submitted on behalf of the prosecution that the evidence of PW2 gets sufficient corroboration from the other PWs more specifically from the evidence of the doctors of the Purulia Sadar Hospital i.e. PW8 and PW9.

16. In course of her submission Ms. Faria Hossain draws attention of this Court to the evidence of PW4. It is submitted by her that PW4 being the victim duly testified as to how he was assaulted by the present appellants which gets due corroboration from the evidence of the other PWs and therefore there cannot be any justification to disbelieve the said

corroborated testimony of PW4. Drawing attention to the evidence of PW7 and PW8 being the two doctors of Purulia Sadar Hospital vis-a-vis Exhibit nos.3 and 4 being the injury report of the victim and the treatment sheet of the victim (PW4) it is argued by Ms. Hossain that the testimony of PW4 with regard to the mode of assault and injury suffered by him gets sufficient support from the evidence of the said two doctors which the learned trial court rightly believed.

17. Placing reliance upon the reported decision of ***Jage Ram Vs. State of Haryana*** reported in **2015 (11) SCC 366** it is argued by Ms. Hossain that it has been held by the Hon'ble Apex Court in the said decision that in order to attract the provision of Section 307 IPC it is not essential that fatal injury capable of death should have been caused. It is submitted further that all that is necessary is to come to a finding with regard to the intention of the accused which is to be gathered from various circumstances. Ms. Faria Hossain thus submits that it is a fit case for dismissal of the instant appeal.

18. Since the trial court in its impugned judgement has elaborately discussed the evidence of all the prosecution witnesses this Court considers that recapitulation of the entire evidence of PWs is not at all necessary except to the extent the same is necessary for effective disposal of the instant appeal.

19. As discussed supra trial court record reveals that before the learned trial court the prosecution tendered 9 witnesses in all, out of whom PW1 is the Recording Officer. PW2 is the informant. PW3 is the family member

of the victims i.e. wife of the brother of PW4 (Sridam). PW4 is one of the victims who according to the prosecution suffered fatal injuries on his shoulder as well as on his forehead on account of alleged assault by the present appellants. PW5 is the wife of PW4. PW6 is the son of PW4 i.e. Sridam. PW7 is the I.O. while PW8 and PW9 are the two medical officers of Purulia Sadar Hospital.

20. On careful consideration of the entire materials as placed before this Court it appears PW2 being the informant in his said petition stated that on the relevant day and hour soon after the alleged incident he and his family members including the victims went to the Adra P.S but their complain was not reduced into FIR. In paragraph 4 of the said petition it has been stated that even at the time of filing of the said petition the male injured persons were in judicial custody. This Court has meticulously gone through the evidence of PW2 also. This Court has failed to notice any logical explanation on the part of the PW2 as to what prevented him to approach the jurisdictional Sub-divisional Magistrate at the earliest. In view of such, this Court considers that for want of proper explanation of delay in lodging the FIR against the present appellants a doubt arises with regard to the genuineness of the same inasmuch as it reveals from the said petition that immediately after the occurrence of the alleged incident, an FIR was lodged against Sridam (PW4) and his family members. This Court has meticulously gone through Exhibit nos. 3 and 4 i.e. the injury report of PW4 and the treatment sheet of PW4. This Court has also perused evidence of PW8 and PW9 who are the medical officers of

the Purulia Sadar Hospital. It reveals that when PW4, Sridam was brought to the said hospital he was conscious and for reason best known to him before the said two doctors he did not take the names of the alleged assailants. From Exhibit 3 it reveals further that one Muruli Majhi, a relative of Sridam brought him to the said hospital. The said Muruli Majhi was not tendered as PW for the best reason known to the prosecution.

21. Admittedly PW4 (Sridam) i.e. the alleged victim of the alleged incident and other private prosecution witnesses who are his family members, in their respective depositions were consistent with regard to the alleged role of the present appellants since it has been consistently stated by them that on the relevant day and hour Sridam was assaulted by Dhiren (the appellant no.2 herein) by an iron rod causing injury on his right scapula region on right acronian bone while appellant no.1 Ajit gave a blow of axe on his forehead causing serious bleeding injury. However, from the cross-examination of PW8 and PW9 it reveals that the said two doctors opined that such injuries can be caused on a fall on a stone. As rightly pointed out by Mr. Ghosh that from the evidence of PW3 it would reveal that one Swapan Mondal and Tapan Mondal had gone to the P.O immediately after occurrence of the alleged incident. He further drew attention of this Court to the evidence of PW5 wherefrom it reveals that in her cross-examination she testified that villagers came to the P.O later on.

22. It appears to this Court that the prosecution has failed to assign any reason as to what prevented them to tender the said Swapan Mondal

and Tapan Mondal as charge sheeted witnesses who could have thrown some light with regard to the actual state of affairs as occurred at the P.O on the relevant day and hour.

23. It is trite law that in a criminal trial the evidence of an injured witness is treated to be a valuable evidence inasmuch as it is excepted that being an injured witness he cannot have any intention to screen the real offender and to implicate the persons who are not connected with the alleged crime.

24. However, in considered view of this Court the same cannot be treated as a strait jacket formula and in an appropriate case even the evidence of an injured witness is also to be weighed keeping in mind the surrounding circumstances. Coming to the factual aspects of this case it reveals that the alleged incident occurred on account of a family rivalry over the plastering of a wall and thus family members of the accused persons and the family members of the informant were injured. In view of such, the chance of exaggeration and/or false implication cannot be ruled out.

25. This Court is also conscious that while assessing the evidence of interested witnesses the approach of the court should not be pedantic. The court must be cautious in appreciating and accepting the evidence adduced by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. Such view was taken by the Hon'ble Apex Court in the

reported decision of ***Jaya Balan vs. Union Territory of Pondicherry*** reported in **(2010) 1 SCC 199**.

26. As discussed supra, this Court has noticed sufficient discrepancies and/or contradiction and/or omission in the evidence of PWs and therefore it would not be safe to rely on the evidence of the private witnesses who have been tendered before the learned trial court on behalf of the prosecution treating the same as sacrosanct. In the reported decision of ***State of Rajasthan vs. Raja Ram*** reported in **(2003) 8 SCC 180** the Hon'ble Apex Court expressed the following view:-

“The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.”

27. In considered view of this Court the reported decision of ***Jage Ram (surpa)*** as cited from the prosecution though deals with the circumstances for attracting Section 307 IPC but in considered view of this Court the same has got no manner of application in view of the inconsistencies in the evidence of the prosecution witnesses and on account of un-explained delay in lodging FIR.

28. In view of the discussion made hereinabove this Court thus finds sufficient merit in the instant appeal. Accordingly the instant appeal is hereby allowed.

29. Consequently the judgement of conviction dated 20.07.2005 and the order of sentence dated 21.07.2005 as passed by the learned

Additional Sessions Judge, Fast Track Court (IV), Raghunathpur, District Purulia in ST-3(9)03 is hereby set aside.

30. The appellants namely; Ajit Majhi Gope and Dhiren Majhi Gope are thus found not guilty under Section 307 IPC in connection with ST-3(9)03 as disposed of by learned Additional Sessions Judge, Fast Track Court (IV), Raghunathpur, District Purulia.

31. Appellants are thus discharged from their respective bail bonds and be set at liberty at once if not wanted in connection with any other case.

32. Department is hereby directed to send down the trial court record along with a copy of this judgement to the trial court forthwith.

33. Department is further directed to forward a copy of this judgement to the Member Secretary, High Court Legal Service Committee who on receipt of the same shall disburse the admissible amount of honorarium to Mr. Souryadeep Ghosh, learned advocate and Mr. Jyotirmoy Talukdar learned advocate, who have been appointed by this Court to argue on behalf of the appellants, preferably within a month from the date of communication of this judgement.

34. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)