

28.08.2025
Sl. No.15
AMR
Ct.No.655

CRA 689 of 2016

In the matter of : **Md. Ali Hossain @ Ghulla @ Jhola**

.... Appellant

Mr. Ramashis Mukherjee
Ms. Debanjana Sen

...for the Appellant

Md. Kutubuddin

...for the State

(Dictated in Court)

1. The impugned judgment and order of conviction dated 04.08.2016 and 05.08.2016 passed by the learned Additional District and Sessions Judge, Fast Track 1st Court, Howrah in connection with Sessions Trial No. 285 of 2009 arising out of Shibpur Police Station Case No. 112 of 2008 dated 2nd April, 2008 is assailed in this appeal.
2. By passing the impugned judgment and order of conviction, the present appellant is found guilty for commission of offence punishable under Sections 307/326/120B of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for three years along with a fine of Rs. 2,000/-, and in default of payment of fine to undergo further rigorous imprisonment for one month for the offence committed under Section 307 of IPC. He was sentenced to suffer rigorous imprisonment for three years along

with a fine of Rs. 1,000/-, and in default of payment of fine to undergo further rigorous imprisonment for fifteen months for the offence committed under Section 326 of IPC . For conviction under Section 120B of IPC, this appellant was sentenced to suffer rigorous imprisonment for three months along with fine of Rs.500/- and in default of payment of fine to suffer a further rigorous imprisonment for 10 days.

3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction, the present appeal is preferred at the behest of the appellant/convict,

4. In short campus, the story of the prosecution is delineated hereunder :-

“The instant case was started on the basis of a complaint lodged by the defacto complainant stating, *inter alia*, that on 02.04.2008 at 7 P.M., the victim was going to Kajipara Naya Basti near Bataitala Bar and at that time, this appellant/accused along with other accused persons entered into altercation and assaulted the victim on his head and over the body with sharp weapon with the intention to murder him and as such, the victim sustained injuries on his person. The victim was taken to hospital from the place of occurrence.”

5. On the basis of such complaint, concerned police station started case being Shibpur P.S. Case No. 112 of 2008 dated- 02.04.2008 under Sections 341/326/307/506/120B/34 of IPC. Thus, the criminal law was set in motion.

6. After investigation, police submitted charge sheet against this accused along with other accused persons under Section 341/326/307/506/34 of IPC. showing rest of the accused persons as absconders.

7. Charge was framed by the Trial Court against the accused person under Sections 307/326/120B of IPC.

8. In this case, nine witnesses were examined by the side of the prosecution and the documents were marked as exhibits on its behalf. Neither any oral nor any documentary evidence was adduced by the side of the defence.

9. Mr. Ramashis Mukherjee, learned advocate on behalf of the appellant has said that there are apparent contradictions and omissions in the evidences of the witnesses and as such, the impugned judgment and order of convictions passed by the learned Trial Court is not sustainable under the eye of law.

10. It is further contended by the learned advocate that each part of the prosecution case suffers from meagerness of evidence and in absence of such satisfactory evidence, the findings of the learned Trial Court in the impugned judgment cannot be said to be perfect.

11. Attention of this Court is drawn to the evidence of the defacto complainant (P.W.-1) as well as the evidence of the victim. It is said by the learned advocate that nothing incriminating materials are found in the evidences of the witnesses for which the conviction against the accused person can be sustained.

12. It is further contended by the learned advocate for the appellant that the offending weapon, in connection with this case, was not seized by the Investigation Team. The evidences of the prosecution witnesses do not indicate the commission of alleged offence involving this appellant/accused. So, it is prayed that the impugned judgment and order of conviction passed by the learned Trial Court should be set aside.

13. Md. Kutubuddin, learned advocate for the State has said that there is nothing material in the record for which the impugned judgment and order of conviction passed by the learned Trial Court may be interfered with. It is said by the learned advocate that all the witnesses, cited by the prosecution, corroborate the story of the written complaint. The defacto complainant as well as the victim stated in their evidences regarding assault made by the appellant from which it can be inferred that the accused persons were involved in commission of the alleged offence.

14. So, it is said by the learned Advocate for the State that the instant appeal challenging the impugned judgment and order of conviction passed by the learned Trial Court may be rejected outright and the impugned judgment and order passed by the learned Trial Court may be upheld.

15. I have considered the rival submissions advanced by both the parties and have gone through all the materials on record.

16. In this case, a complaint was lodged by the P.W.1 (Vicky Chowdhury) contending, inter alia, that on the relevant date and time, the appellant/accused along with other accused persons

assaulted the victim and as such, he sustained severe injuries on his head and was admitted into hospital. At the time of evidence taking process, this P.W.-1 did not corroborate the contentions of the written complaint; rather he said that he did not know the accused person. On cross-examination, he said that he did not know anything about the written complaint and about the case.

17. Astonishingly, the written complaint filed by the defacto complainant is not marked as exhibit in this case. No plausible explanation was given by the side of the prosecution regarding non-exhibiting the same in connection with this case. It is a well-settled principle of law that unless a document is formally proved and marked as an exhibit in evidence, the Court cannot take the same into consideration while appreciating the merits of the case. In the present matter, the written complaint, though produced during the course of trial, was never proved in accordance with law nor was it exhibited as an exhibit on record. A document which is not exhibited has no evidentiary value and cannot be relied upon either by the prosecution or by the Court. Merely placing a document on record or referring to it in oral testimony does not automatically make it admissible evidence.

18. In the instant case, the written complaint remained as an unproved piece of paper. It was neither exhibited through the complainant nor proved through any competent witness who could vouch for its authorship or authenticity. In such circumstances, the said document is inadmissible in evidence. The documents which are not proved and exhibited cannot be

read into evidence, and any reliance placed on such document would vitiate the finding of the Court.

19. Therefore, in absence of formal proof and in absence of its marking as an exhibit, the written complaint cannot be taken into consideration for any purpose whatsoever, either to corroborate the prosecution case or to form a basis of conviction.

20. P.W.-6 is the victim and the star witness of the prosecution. He stated in his evidence that on the relevant date and time, he went in a Bar at Baraitala wherein an altercation took place between the victim and this appellant along with other accused persons over the issue of drinking of wine and as a result, he was assaulted by the appellant and his associates with the razor and chopper. It is further stated by P.W.-6 that over the incident, he received bleeding injury and was admitted to hospital.

21. In this case, the said weapon, by which the alleged assault was made by the appellant and his associates upon the victim, was not seized by the Investigative Officer and no explanation is given by the side of the prosecution regarding non-seizure of the said offending weapons. The non-seizure of the alleged weapons is a material omission that creates a grave doubt about the very foundation of the prosecution case. In criminal jurisprudence, when the case of the prosecution is based on specific allegations of assault with particular weapons, it is incumbent upon the Investigating Officer to recover those weapons and produce it before the Court, so as to establish a clear nexus between the injuries sustained by the victim and the weapons allegedly used

by the accused. The seizure and production of such weapons not only corroborates the ocular version of witnesses but also lends assurance to the medical evidence. In absence of the seizure of weapons, the prosecution case suffers from a serious infirmity. It becomes unsafe to rely merely on oral assertions of the witnesses without corroboration through the recovery of the alleged instruments of offence.

22. Such unexplained non-recovery of the alleged weapons weakens the prosecution story to a great extent and renders it improbable. Thus, in absence of seizure of the offending weapon, there remains a clear disconnect between the alleged manner of assault and the medical report (Exhibit-2). Therefore, the non-seizure of the offending weapons and the lack of explanation for such omission strike at the root of the prosecution case. This vital lacuna renders the prosecution story doubtful and creates a strong presumption in favour of the innocence of the accused. The benefit of such doubt must necessarily go to the appellant.

23. I have already said that P.W.-1, the defacto complainant, has made statement that he did not have any knowledge about the contents of the First Information Report.

24. It would appear from the evidence of P.W.-4/doctor, who treated the victim has said in his evidence that the victim fled away from the hospital in which she was admitted for treatment. It also creates a doubt about the conduct/behavior of the victim and towards his trustworthiness. The prosecution has also failed to furnish any explanation as to why the victim fled from the

hospital and under what circumstances he chose to discontinue her treatment. This unexplained conduct cannot be brushed aside lightly, as it goes to the root of the credibility of the victim's evidence. Therefore, the testimony of P.W.-4, the doctor that the victim fled away from the hospital introduces a strong element of doubt about the veracity of the prosecution story. It makes evidence of the victim unsafe to rely upon without independent corroboration. In the absence of any plausible explanation, the unnatural conduct of the victim erodes the credibility of his allegations.

25. P.W.-7 Manoj Singh is the brother of the victim (PW6) before whom also the names of the appellants were not disclosed by the victim (P.W.-6). It is said by the witnesses that he heard the incident from the public.

26. The victim (P.W.-6) has admitted in his evidence that on the date of alleged incident, he went in a Bar at Bataitala and some discrepancies have been cropped up in between the present appellant and with him and as such, he sustained assaults on his persons. In cross examination this witness said that the accused persons assaulted him on a road but he did not state specifically who actually assaulted him. His testimony as a prosecution witness in cross-examination creates a serious dent in the credibility of the prosecution case. His version remained vague and general in nature, without attributing any specific overt act to any particular accused. When a witness alleges assault by multiple accused, he must clearly state the role of each accused

and identify who did what during the incident. A general statement that “the accused persons assaulted me” is insufficient, particularly in cases where multiple accused are facing trial. Unless specific attribution of acts of assault is made against individual accused, the evidence cannot be said to be trustworthy or reliable. The absence of such specification makes it impossible for the Court to ascertain the individual culpability of each accused. The failure of the witness to name the particular accused who allegedly assaulted him renders his testimony omnibus and lacking in probative value. Other witnesses, who are cited in this case, were also remained silent about the alleged assault inflicted by these appellant and other accused persons. Since the witness has not clarified who amongst the accused actually inflicted the assault, his evidence remains vague and cannot safely be relied upon. This omission assumes greater importance because identification and specific attribution are the backbone of criminal culpability.

27. The testimonies of the prosecution witnesses are inconsistent, vague, or lacking in material particulars. None of the witnesses have been able to establish, by clear and convincing evidence, the essential ingredients of the offence alleged against the appellant. In a criminal trial, the burden lies heavily on the prosecution to prove its case beyond all reasonable doubt. It is not sufficient for the prosecution to raise suspicion or possibility; the evidence must be of such a nature that it excludes every hypothesis except the guilt of the accused. In the instant case, the evidence of the

witnesses, when analyzed in its entirety, does not inspire confidence and falls far short of the standard required in law. Their versions suffer from omissions, contradictions, and inherent improbabilities which go to the root of the matter and make the prosecution case doubtful.

28. The learned Trial Court, however, appears to have overlooked these deficiencies and proceeded to convict the appellant without properly appreciating the evidences on record. The impugned judgment and order was passed by the learned Trial Court on the basis of surmise and conjecture without any cogent reasons. There is nothing material in the record for which it can be said that the ingredients of the offence for which this appellant was convicted, is present in this case. A conviction in a criminal case must rest upon clear, cogent, and convincing evidence which proves the guilt of the accused beyond all reasonable doubt. In the present case, there is nothing on record to establish that the essential ingredients of the offence for which the appellant has been convicted are present. Neither the oral testimony of the witnesses nor the documentary evidence, adduced by the prosecution, satisfies the legal threshold required to bring home the charge. The learned Trial Court, however, overlooked these material deficiencies and proceeded to convict the appellant merely on assumptions and possibilities.

29. The role of the Trial Court is to analyze the evidence on record, weigh its credibility, and arrive at a reasoned finding. In the instant case, the impugned judgment does not reflect any

proper appreciation of evidence or any cogent reasoning as to how the appellant's acts fulfilled the statutory ingredients of the alleged offence. On the contrary, the record demonstrates that there is no substantive material to link the appellant to the alleged acts in a manner which would satisfy the requirements of law. The finding of guilt is therefore wholly unsustainable. By relying on surmise and conjecture, the learned Trial Court has committed a manifest error in law, which vitiates the conviction.

30. Accordingly, the instant appeal be and the same is hereby **allowed**.

31. The impugned judgment and order of conviction passed by the learned Additional Sessions Judge, Fast Track Court-1, Howrah, dated 04.08.2016 and 05.08.2016 in connection with Sessions Trial No.285 of 2009 is hereby set aside.

32. 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.

33. Let a copy of this order along with TCR be sent down to the learned Trial Court immediately.

34. Urgent photostat certified copy of the order, if applied for, be given to the parties upon complying with all legal formalities.

(Prasenjit Biswas, J.)