

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 910 of 2013

Chattar Sheikh & Ors.

Vs.

State of West Bengal

For the Appellants : Mr. Angsuman Chakraborty, Adv.
Mr. S S Saha, Adv.

For the State : Mr. Saibal Bapuli, Ld. APP
Mr. Bibaswan Bhattacharya, Adv.

Heard on : 15.02.2022

Judgment on : 15.02.2022

Joymalya Bagchi, J. :-

Appellants were made to stand trial on charges being framed under sections 307/34, 326/34 and 459/34 IPC.

The gist of the prosecution case levelled against the appellants is as follows:

Appellants are related to the victim, P.W. 2. Appellant No. 1 is her uncle, while appellant Nos. 2 and 3 are the cousins of appellant No. 1. These appellants along with one Hasibul Sk who was minor at the time of occurrence, had a dispute with the father of the victim over construction

of a bathroom and latrine adjacent to their house. Her father was digging a pit at the same place. Over such dispute, the appellants had assaulted her father. She lodged a complaint against the appellants. Out of grudge, on 20th April 2009 around 11 p.m. while victim P.W. 2 was sleeping in her room, the appellants trespassed into the room and threw acid on her face. As a result, she suffered acid burn injuries and lost sight in her left eye. She was initially treated at Kaliganj PHC and thereafter Berhampore Hospital. She was finally discharged on 25th May 2009. On 22nd April 2009 Asnahara Bibi, elder sister of the victim, lodged written complaint which was registered as Kaliganj PS case no. 171 of 2009 dated 22.04.2009 against the appellants. Upon completion of investigation, charge-sheet was submitted against the appellants and they were put on trial. In the course of trial, prosecution examined 13 witnesses and exhibited a number of documents. In conclusion of trial, learned trial Judge by impugned judgment and order dated 31.01.2013 and 01.02.2013 convicted the appellants for commission of offence punishable under Sections 307/326/459 read with section 34 of the Indian Penal Code and sentenced them to suffer imprisonment for life and to pay fine of Rs.5000/- each in default, to suffer imprisonment for one year, for the offence punishable under Section 307 of the Indian Penal Code, to suffer imprisonment for life and pay a fine of Rs.3000/- each, in default, to suffer imprisonment for one year, for the offence punishable under section 326/34 IPC and to suffer imprisonment for life and also pay a fine of Rs.3000/- each, in default, to suffer imprisonment for one year for the

offence punishable under section 459/34 IPC. All the sentences were directed to run concurrently.

Appellants have challenged their conviction and sentence in this appeal.

Mr. Chakraborty, learned Counsel appearing for the appellants submits that the identification of the appellants by the victim is unreliable. Her sister (P.W. 1) deposed the victim told her she could not identify the assailants in the darkness. Before the investigating officer the victim stated that she could not see anything with her own eyes and her sister stated the assailants fled away from her room. Names of the miscreants had not been disclosed before the treating doctor at Kaliganj PHC or Berhampore Hospital. Even before registration of F.I.R., two of the appellants namely Sattar Sk and Neki Sk were arrested. Hence, original F.I.R. had been suppressed and written complaint of P.W. 1 cannot be treated as F.I.R. Due to prior enmity, appellants have been falsely implicated. Independent witnesses have not supported the prosecution case. Accordingly, the appellants are entitled to an order of acquittal.

On the other hand, Mr. Bapuli with Mr. Bhattacharya, learned Counsels appearing for the State submits that the prosecution case has been proved through cogent and reliable evidence. They argued Sahanara Khatun, P.W. 2 deposed the manner in which she had been attacked by the appellants. Her elder sister Asnahara Bibi (P.W. 1) was present in the house and saw the appellants run away. Similarly, P.W. 8, brother of the appellant who was sitting in an adjoining house also saw the appellants

run away from the place of occurrence. As the family members were busy with the treatment of the victim there was some delay in lodging FIR. Failure to record names in the medical papers per se would not affect the credibility of the prosecution case. Hence, conviction and sentence of the appellants are liable to be upheld.

P.W. 2 is the injured victim in the present case. She deposed on 6th Baisak at 11 p.m. while she was sleeping in her room, appellants came into the room and threw acid on her left eye. Thereafter, the appellants fled away. She raised alarm and neighbours came to the spot. Her elder sister took her to Kaliganj PHC. From there, she was shifted to Berhampore Hospital. She lost sight in her left eye and hearing in the left ear. She also suffered injuries on her face. She identified the appellants in court. In cross-examination, she stated appellants are related to her. They were constructing a bathroom and latrine adjacent to their house. Her father was digging a pit on the same spot. Dispute arose over such issue and her father was mercilessly beaten. She lodged complaint against the appellants at Kaliganj police station. She had disclosed the names of the appellants to the doctor.

P.W. 1 is the elder sister of the victim. She deposed on the fateful night she was sleeping in the veranda. On hearing hue and cry, she woke up at around 11 p.m. and found the appellants come out of the room. She identified the appellants with the help of lantern. P.W. 1 had told her that she could not identify the persons due to darkness. Thereafter, she along with her mother took her injured sister to hospital. She lodged written

complaint which was scribed by Abbas Ali Mondal, P.W. 7. She proved her signature on the complaint. In cross-examination, she deposed that she disclosed the names of the appellants to the doctor.

P.W. 8 is the younger brother of the injured victim. On the day of the incident he was sitting in the house of his friend adjacent to their house. On hearing hue and cry, he came out and saw accused persons fleeing away from the spot. He found his sister with burn injuries on her face. Her sister was taken to hospital. Police seized a pillow cover and hurricane from the house. He identified the articles in court. In cross examination, he stated that he had narrated the incident to the Darogababu who wrote down the complaint. He had not signed on the complaint. Immediately thereafter Darogababu had arrested Sattar Ali and Neki. As there was delay in lodging complaint, Darogababu released the two accused persons. On 22.04.2009 her sister lodged written complaint.

P.Ws. 10, 11 and 12 are medical witnesses who treated P.W. 2. P.W. 10 deposed he was posted at Kaliganj BPHC at the material point of time. He found 9% burn injury on the face of P.W. 2. After primary treatment, he referred the patient for better treatment to Nadia District hospital. He proved the injury report (Exhibit 3). In cross-examination, he stated that one doctor Asraf Sk had treated the victim earlier.

P.Ws. 11 and 12 treated the victim at Berhampore New General Hospital. On 21.04.2009 P.W. 11 examined the victim. On examination, he found acid burn injury on her scalp, face, both eyes, neck and right

shoulder joint. He recorded the history of injury. He referred the case to his colleague Eye Surgeon, Dr. Ashoke Kr. Bhakta (P.W. 12). He proved the medical report (Exhibit 4).

P.W. 12 examined the victim and found the injury on the left eye was very grave. Victim had lost her sight in the left eye. Injury was grievous in nature. The victim was discharged from hospital on 25.05.2009. He proved the injury report (Exhibit 4).

P.W. 13 is the investigating officer in the instant case. He deposed on taking charge of investigation he visited the place of occurrence and prepared rough sketch map with index, Exhibit 5. He examined witnesses. He arrested the accused persons. He seized pillow cover under seizure list. In cross-examination, he stated that he collected injury report from Berhampore New General Hospital where there is no name of the assailants noted in the FIR. He stated Sahanara told her she could not see anything with her eyes. She heard from her sister that the accused persons have fled away. P.W. 2 further stated that she could not recognize the assailants in the light of lantern.

Relying on the evidence of P.W. 1 and that of investigating officer (P.W. 13) it has been strenuously argued that identification of the appellants by the injured victim, P.W. 2 is unreliable. P.W. 1 stated that her injured sister had told her she was unable to identify the assailants due to darkness. Similarly, investigating officer (P.W. 13) stated the injured victim told her she could not identify the assailants with her own eyes and P.W. 1 had told her that the assailants had fled away. In view of

the aforesaid evidence on record although there may be some doubt whether P.W. 2 could have identified the assailants, deposition of P.W. 1 with regard to identification of the assailants is beyond reproach. P.W. 1 is the elder sister of the victim girl and was present in the house on the fateful night. Hearing hue and cry, she woke up and saw the appellants run away from the room in the light of lantern.

It is contended there is confusion whether she was sleeping in the veranda or in her room. Minor variation with regard to the place where she was sleeping does not affect the intrinsic truth of her version. The incident happened on a hot night and windows and doors of the room were open. Hence, even if the victim was in the room it was possible for her to see the assailants run away in the light of the lantern. Her version is corroborated by the younger brother, P.W. 8, who was sitting with a friend in the adjacent house. Being alarmed by the cries, P.W. 8 also came out of the house and saw the appellants run away from the place of occurrence. These two witnesses clearly establish at the time occurrence the appellants were in the room of the victim and after the incident had run away. Even if one accepts that the victim was unable to identify her assailants, in view of the evidence of P.W. 1 and 8, I have no doubt in my mind that the appellants were the persons who inflicted acid burn injury on the face of the victim.

Medical evidence on record corroborates the ocular version of the aforesaid witness. P.W. 10 treated the victim at Kaliganj BPHC while P.Ws. 11 and 12 had treated her at Berhampore New General Hospital. All

the doctors noted acid burn injuries on her scalp, head and face. Her left eye had been wholly damaged and the injury was grievous in nature. She was in the hospital for more than a month.

It is argued that the present case is improbable as the independent witnesses have not supported the case. I am unable to accept such proposition. P.Ws. 3 to 6 are the neighbours who were examined in the case. P.W. 5 was declared hostile and was cross-examined vis-à-vis departure from his previous statement to police. Appellants were related to the victim and incident occurred due to a long standing family feud. It is common knowledge that local people do not wish to take sides in a family dispute. Hence, most of the neighbours kept mum or departed from their earlier version to police supporting the prosecution case. On the other hand, the incident has been established beyond doubt through the deposition of the injured witness P.W. 2 as well as her relations P.Ws. 1 and 8 and the medical evidence on record. Version of a witness cannot be thrown out merely because he/she is related to an injured victim. Relationship between parties is not a ground to discredit the evidence of a witness if the same is otherwise credible. Furthermore, it is most unlikely that a relation of an injured victim would screen the actual offender and falsely implicate another in the crime.

It is argued false implication is due to previous grudge. Enmity is a double-edged sword. While previous enmity may give rise to false implication, it may also provide motive to commit the crime. In the present case there was a running feud between the relations in the family.

Appellants who were related to the injured witness had assaulted her father earlier. She lodged complaint against the appellants and out of grudge they threw acid on her face on the fateful night. Depositions of P.Ws. 1, 2 and 8 in that regard are clear, convincing and inspire confidence. Medical evidence also corroborates their version. In this backdrop, I am of the view that the prosecution case cannot be thrown out on the plea prior enmity had prompted the witnesses to falsely implicate the appellants. On the other hand, such prior grudge had provided motive to commit the crime.

It is further argued that there was delay of two days in lodging the F.I.R. There was suppression of an earlier complaint lodged with the police. In this regard, Mr. Chakraborty refers to the evidence of P.Ws. 1 and 8 as well as the investigating officer (P.W 13). He submitted that the family members had gone to the police station on the same day and lodged complaint. Such complaint did not see the light of the day.

I have considered the aforesaid submission in the light of the evidence on record. P.W. 8 stated they took the injured to Kaliganj PS and informed Darogababu about the incident. Darogababu, however, did not take his signature on the complaint but proceeded to act on it and arrested two of the appellants. Failure on the part of the police to reduce the oral complaint by P.W. 8 into a signed document and treat it as F.I.R., is a defect in investigation. However, conduct on the part of the police to arrest two of the appellants clearly show that the accusation on the night of the incident itself was directed against none other than the appellants.

Failure on the part of the Officer-in-Charge to obtain signature of P.W. 8 on the complaint is a remissness in the process of investigation which does not affect the intrinsic quality of the prosecution case. That apart, family members were engaged in saving the life of the injured who was initially taken to Kaliganj BPHC and then shifted to Berhampore New General Hospital. Due to their involvement in her medical treatment, there was some delay in lodging the written complaint by P.W. 1 at the police station which has been treated as F.I.R. Judged from this background, delay in lodging F.I.R. has been substantially explained and does not affect the credibility of the case.

In the light of the aforesaid discussion, I am of the opinion the prosecution has been able to prove that the appellants out of previous grudge threw acid on the face of the victim thereby causing grievous injury resulting in loss of sight in the left eye and hearing in the left ear.

Hence, I uphold the conviction recorded against the appellants.

Coming to the issue of sentence, I have no doubt in my mind that the offence is a heinous one resulting in permanent disfigurement of the face and loss of sight and hearing. However, incident occurred due to a long-standing family feud. Appellants do not have prior convictions. It is also pertinent to note that the appellants have already undergone imprisonment for more than 12 years.

Balancing the aggravating and mitigating factors in the present case, I am of the opinion, interest of justice would be served in the event the sentence of life imprisonment imposed on the appellants on each

count be modified and it is directed that the substantive sentences be reduced to rigorous imprisonment for 10 years each on each count and the sentences shall run concurrently. Fine amounts, as awarded by the trial Court, shall remain unaltered.

With the aforesaid modification as to sentence, the appeal is disposed of.

Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon them in terms of section 428 of the Code of Criminal Procedure.

Copy of the judgment along with L.C.R. be sent down to the trial court at once.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)