

Form No.J(1)

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

Present:

The Hon'ble Justice Tirthankar Ghosh

CRA 646 of 2019

***Rajjak Sk @ Rajesh @ Rajesh Ali*
versus
The State of West Bengal**

For the Appellant : Mr. Robiul Islam
Mr. Raju Mondal

For the State : Mr. Debashis Roy, Id. PP

Heard On : 24-07-2024

Judgment On : 24.07.2024

Tirthankar Ghosh, J. :

The present appeal has been preferred challenging the Judgment and Order of Conviction and Sentence dated 30.03.2019 and 01.04.2019 passed by the learned Addl. Sessions Judge, 1st Fast Track Court, Berhampore, Murshidabad in Sessions Trial No. 01(12)/2017 arising out of Sessions Serial Case No. 225 of 2017, wherein the learned Sessions Judge was pleased to hold the appellant guilty of offence punishable under Section 323 of the IPC and sentenced him to suffer S.I. for one month and to pay fine of Rs. 1,000/- I.D. further S.I. for 15 days.

By the said order, the Id. Trial court was pleased to direct the appellant to pay compensation of Rs.3,000/- to the injured namely, Nasiruddin Sk., who had to undergo treatment to cure his wounds under Section 357 of the Cr.P.C.

The genesis of the present case was on the basis of the application under Section 156(3) of the Cr.P.C., which was preferred before the learned CJM, Murshidabad, Berhampore.

It was alleged that in the application under Section 156(3) of the Cr.P.C. that the accused Rajjak Sk. @ Rajesh Sk was involved in the business of centering. At the time of incident, the complainant was taking tea at a tea stall at Nowpara More and was talking with one of his customer regarding the rate of the centering work when suddenly, the accused caught hold of the collar of the complainant's shirt and started assaulting him with fists and blows. Consequently, the complainant fell down on the ground when the accused attacked him with a broken glass on his head with the intention of killing him. As a result, the complainant sustained injuries and lost his consciousness. The accused thereafter left the place of occurrence under the impression that the complainant had died, however local people took the complainant to Berhampore Medical College and Hospital for his treatment. He was admitted there for four days and was under treatment. The complainant informed Berhampore Police Station vide G. D Entry No. 1817/2012 dated 20-11-2012. However, the police refused to take any steps and as such he had no other option but to approach the court.

On the basis of the complaint filed by the complainant, Berhampore P. S. Case No. 52/13 dated 11-01-2013 u/s. 325/326/307 IPC was registered for investigation against the present appellant. The Investigating Authorities on completion of investigation submitted charge-sheet under Section 325/326/307 of IPC. The case was thereafter committed to the court of sessions by the learned Chief Judicial Magistrate, Murshidabad and subsequently the records were transmitted to the learned Additional Sessions Judge, 1st Fast Track Court, Berhampore, Murshidabad for trial.

The learned court on 06-12-2017 was pleased to frame charge against the accused under Section 307 IPC, the substance of the charge was read over and explained to him, to which he pleaded not guilty and claimed to be tried.

The prosecution, in order to prove its case relied upon seven witnesses, which included P.W.1- Nasiruddin Sk, complainant and injured; P.W.2- Mira Sk, an acquaintance of the complainant and the accused; P.W.3 – Appel Sk, a witness who was present at the time of incident but who reached after hearing hue and cry; P.W.4- Sanjoy Sk., a co-villager; P.W.5- S.I. R.K. Gupta, the investigating officer of the case; P.W.6 – Kabirul Islam Biswas, an advocate, who prepared the complaint; P.W.7 – Dr. Md. Nefaur Rahaman, doctor who treated the complainant.

On an appreciation of whole of the evidence, the ld. Trial court was pleased to hold that no offence under Section 307 of the IPC has been made out against the accused/appellant and proceeded to alter the charges by relying upon deposition of witnesses. However, the learned trial Court was of

the opinion that the incident occurred at the place of occurrence for which the accused/appellant can only be charged under Section 323 IPC. The learned trial court thereafter was pleased to sentence the appellant under Section 323 IPC as stated above.

I have considered the evidence and the issues in the appeal which do not inspire confidence in respect of interference with the findings of guilt, however, having considered that the incident complained of is of the year 2012 at this stage I do not find any reason to send the appellant to jail for a period of one month. However, as the appellant is held to be guilty of the offence under Section 323 IPC, I direct the appellant to furnish a good behaviour bond before the learned CJM, Murshidabad for a period of one year. The good behaviour bond would be for an amount of Rs.10,000/- furnished by a responsible person of the locality within the jurisdiction of Berhampore Police Station, which should be furnished within a period of four weeks from date.

In case, there is any further violation, the learned CJM, Murshidabad would be at liberty to cancel the bond and send the appellant to suffer sentence which was imposed by the learned trial court.

However, within the aforesaid period of four weeks, the appellant will deposit the amount of Rs.3,000/-, which was awarded as compensation by the learned trial court.

Accordingly, the instant appeal being CRA 646 of 2019 is **Partly Allowed.**

Pending connected application, if any, is consequently disposed of.

The appellant will be discharged from his good behaviour bond by 31st of August, 2025.

Department is directed to send back the lower court records along with a copy of this judgment immediately to the learned trial court.

Department is directed to communicate this order to the learned CJM, Murshidabad, Berhampore, immediately.

All parties shall act on the server copy of this judgment duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

[Tirthankar Ghosh, J]