

IN THE HIGH COURT AT CALCUTTA

Criminal Appellate Jurisdiction

Before: **The Hon'ble Mr. Justice Shivakant Prasad**

CRA 717 of 2018
(Via video conference)

Sri Sukumar Mondal
Vs.
The State of West Bengal & Anr.

For the appellant : Mr. Suman Das
For the State : Mr. N.P. Agarwala.
Mr. Iqbal Kabir
Mr. Pratick Bose
Heard on : 24.08.2021
Judgement delivered on : 24.08.2021

Shivakant Prasad, J. :

The instant appeal is directed against the judgment dated 09.10.2018 and order dated 10.10.2018 respectively passed by the Additional Sessions Judge, Kalyani, Nadia in connection with Sessions Trial No. 02(07)16 corresponding to Sessions Case No. 07(10)15 thereby convicting the appellant for commission of offence under Sections 324/307 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for three years with a fine of Rs.10,000/- in default to

suffer simple imprisonment for a term of three month for the offence under Section 324 of the Indian Penal Code and further rigorous imprisonment for a term of seven years with a fine of Rs.20,000/- in default to suffer simple imprisonment for a term of six months for the offences under punishable under Section 307 of the Indian Penal Code.

Brief facts leading to the instant appeal is that based on the complaint of one Sankari Sarkar, Chakdaha Police Station being Chakdah P.S. Case No. 269 of 2015 dated April 17, 2015 under Sections 326/307 of the Indian Penal Code was registered and investigation took place.

Prosecution case is that on April 17, 2015 the de facto complainant namely Sankari Sarkar and her sister namely Basanti Mondal went to Chakdaha Market by train for purchasing gift items and marriage articles for Basanti Mondal's daughter's marriage and they decided to invite the appellant and at about 7.30 a.m. they reached to the house of the appellant and saw that he was cooking. Then the de facto complainant proposed to cook for the appellant and the appellant agreed on her proposal. Then the appellant prepared glucose water for the de facto complainant and Basanti Mondal in two mugs. On request when the said Basanti Mondal sipped it, she felt bitter taste of the drink. On being asked the appellant assured that it was a good drink for them and also told that after drinking it, they would feel better but after consuming such glucose water the de facto complainant lost her sense in the kitchen. When she

regained her senses, she heard hue and cry and found Basanti's body lying in a pool of blood and her intestine was gushing out of abdomen and it was muffled around the neck and the appellant was not found there. However, the de facto complainant somehow managed to shift Basanti to the JNM Hospital Kalyani, Nadia with the assistance of the local people.

After conclusion of the investigation the Investigating Officer submitted charge sheet no. 593 of 2015 dated 14.09.2015 under Sections 326/307 of the Indian Penal Code. After the case was committed to the Court of sessions, the learned Sessions Judge took cognizance and transferred the case to the Court of learned Additional Sessions Judge, Kalyani for trial and disposal. The trial started with the framing of charge under Sections 326/307 of the Indian Penal Code against the appellant who abjured the guilty and claimed a Trial. The prosecution examined as many as nine witnesses and on conclusion of the trial, the learned trial judge, held the appellant guilty of the offence under Section 324 / 307 of the Indian Penal Code and accordingly, the appellant was sentenced to suffer rigorous imprisonment for three years with a fine of Rs.10,000/- in default to suffer simple imprisonment for a term of three month for the offence under Section 324 of the Indian Penal Code and further rigorous imprisonment for a term of seven years with a fine of Rs.20,000/- in default to suffer simple imprisonment for a term of six months for the

offences punishable under Section 307 of the Indian Penal Code. The trial Court directed both the sentences to run concurrently.

Being aggrieved by and dissatisfied with the judgment impugned the appellant preferred this appeal on the contention that the judgment is against the weight of evidence on record.

Mr. Suman Das, learned counsel appearing on behalf of the appellant submits that there are glaring discrepancies in the statements of the prosecution witnesses which would strike at the root of the prosecution case. It is also pointed out that the testimony of the post occurrence witnesses reflects that the de facto complainant and the prosecution witness nos. 1 and 3 are the interested witnesses being the sister and the husband of the victim. Prosecution Witness nos. 7 & 8 were declared hostile and all witnesses have deposed falsely with the embellished version in respect of alleged occurrence. Prosecution witness 2 namely, Basanti Mondal deposed that the de facto complainant was served with the drink by the husband of Basanti Mondal but she did not mention the name of the appellant at any point of time. Prosecution Witness No. 9 being the Investigating Officer had examined the de facto complainant on 17.04.2015 at about 10.40 AM at JNM Hospital which is not possible for a human at that point of time. The seizure in respect of articles has not been properly done by the Investigating Officer and there is no explanation of the detail of the articles for the FSL and these are the

lacuna in their investigation as per the submission made on behalf of the appellant. It is also pointed out that the medical evidence adduced in connection with this case does not justify conviction of the appellant for the charges under Section 324/307 of the Indian Penal Code. Accordingly the appellant has submitted that the judgment is bad in law and in fact and is liable to be set aside.

Now, Mr. Das learned counsel for the appellant adverted to the report of the Superintendent of Dum Dum Central Correctional Home to submit that the appellant has nearly served out the sentence for a period of six years six months and seventeen days as on date. The report reflects that sentence undergone by the appellant was five years eleven months twenty two days as on 10.08.2021 and he was also allowed remission period of 189 days and altogether the appellant has served out sentence for six years six month and seventeen days out of seven years of rigorous imprisonment. As regards discrepancy, when the judgment is confronted with discrepancies in evidence on record, it does not necessarily demolish testimony. In my view minor discrepancies do not shake the prosecution case inasmuch as the statement of the victim lady, her deposition and the medical evidence, medical report read together convince the judicial mind to hold that the prosecution has been able to substantiate the charge under Section 307 of the Indian Penal Code.

The judgment impugned reflects that the appellant was convicted for the charges under Section 324 and under Section 307 of the Indian Penal Code.

In my considered opinion since the punishment has been awarded in respect of the major charge under Section 307 of the Indian Penal Code, there is, no necessity for inflicting the punishment separately for the charge under Section 324 of the Indian Penal Code because both the sentences under Section 324 and 307 I.P.C. were directed by learned Court to run concurrently.

In the context of the above, this Court finds no ground to interfere with the judgment of conviction, however, as regards sentence, since the appellant has been punished with the imprisonment for 7 years and to pay fine of Rs.20,000/- for the major charge under Section 307 I.P.C., the separate sentence under Section 324 I.P.C. is not required. Consequently, the appellant would suffer imprisonment for seven years and to pay fine of Rs.20,000/- in default to further simple imprisonment for six months which would suffice the justice.

With the above modification, the appeal being CRA 717 of 2018 is disposed with a direction upon the learned Trial Court to remit the entire fine to the victim lady if realized.

Send copy of this order to the Superintendent of the Dum Dum Central Correctional Home for his information and doing the needful.

Let the Lower Court Records together with a copy of this judgment be sent down to the learned Trial Court for necessary information and necessary note in the Sessions Trial Register and for doing the needful.

(Shivakant Prasad, J.)

SB, A.R.(Court)