

(2017) 07 SC CK 0097

In the Supreme Court Of India

Case No : ?Crl.A. No 1242 of 2017?(Arising out of S L P (Crl)No 9648 of 2014)

Altan Gharami @ Altan SK & Anr.

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 27-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 428](#) - Period of detention undergone by the accused to be set off against the sentence of imprisonment

[Indian Penal Code, 1860](#), [Section 34](#), [Section 307](#), [Section 427](#), [Section 456](#) - Acts done by several persons in furtherance of common intention - Attempt to murder - Mischief causing damage to the amount of fifty rupees - Punishment for lurking house-trespass or house-breaking by night

Citation : AIR 2017 SC 3570 : 2017 AIR (SCW) 3570 : (2017) AllMR(Cri) 3547 : (2017) 3 UC 1702 : (2017) 8 Scale 322 : 2018 AIR (SC)(CRI) 95 : (2018) 13 SCC 512 : (2017) 11 JT 335

Hon'ble Judges : Dipak Misra, J;A. M. Khanwilkar, J;Mohan M. Shantanagoudar, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. Challenge in this appeal is against the Judgment dated 22.08.2014, passed by the High Court of Calcutta in C.R.A No. 310 of 2009, by the convicted accused.

2. The appellants faced trial for certain offences including the offences punishable under Sections 307, 456, 427 read with 34 of the Indian Penal Code (hereinafter referred to as "I.P.C"). The Learned Additional Sessions Judge, Fast Track Court III, Krishnagar, Nadia convicted the appellants for the offences under Sections 307, 456 & 427 read with 34 of IPC, accordingly sentenced them to undergo R.I. for 5 years and fine of Rs.5,000/- each, in default to suffer simple imprisonment for 1 year, R.I. for 3 years with fine of Rs.2,000/- and simple imprisonment for 2 years and fine of Rs.1,000/- respectively that shall run concurrently. By the impugned Judgment, the High Court having found on facts that the appellants

neither caused mischief within the meaning of section 425, I.P.C. nor had any intention or knowledge to commit murder in terms of Section 307, IPC thus convicted them for the offences under Section 326 read with Section 34 and under Section 456 r/w Section 34, IPC.

3. The case of the prosecution in brief, as unfolded in the course of trial is that at about 9:00 P.M. on 10.06.2005 the appellants along with certain others threw brick bats on the tile-shaded house of the informant, Abdul Gaffar Dewan (PW-1) herein. As a result, some of the tiles were damaged. At that time Dalil Dewan (PW-2), father of the informant, intervened and raised objection against illegal acts of the accused. As a result, the appellants being armed with sharp cutting weapons entered into the house of informant and attacked P.W-2, father of the informant, resulting in certain contusions and bleeding injuries. The accused also assaulted the mother, elder brother & sister-in-law of the informant.

4. PWs - 1, 2 & 3 are the eye witnesses, out of them PW-2 is the injured eye witness. The Trial Court as well as the first Appellate Court on facts have concurrently found that the evidence of these three eye witnesses is consistent, cogent and reliable; their evidence supports the case of the prosecution; that the ocular testimony of PWs - 1, 2 & 3 is fully fortified by the evidence of the doctor (PW-4), who found that the victim has suffered grievous injury on head, inside ear as well as on the right-hand wrist and index finger. The victim (PW-2) was admitted to Saktinagar Hospital for 10 days and thereafter treated at N.R.S hospital.

5. Having regard to the totality of the facts and circumstances, we find that the High Court is justified in upholding the conviction against the appellants both for the offences under Sections 326 and 456 of IPC, inasmuch as the accused committed lurking house trespass during night and assaulted the victim with brick bats and sharp cutting weapons which have resulted in four sets of injuries, (including a grievous injury) which are as under :- (i) Left occipital scalp cut 2"x1" with crack out table of skull.

(ii) Right Pinna cut injury extended from the helix upper part of antitragus.

(iii) 2" x 1" cut injury on the dorsal of right hand extended cut and exposing mp joint of index finger.

(iv) Cut injury of the hypothenar over extending to the medial wrist 4" x 1" vessel and muscle cut injury was repaired.

To reiterate, the appellants who have involved in substantial act of inflicting blow on the head causing crack table of skull and impairment of the right index finger using dangerous weapons, are rightly held by the High Court that they have committed the grievous injury as contemplated under Section 320 of IPC.

6. However, in cogitation and scrutiny of the facts and having regard to the material on record in respect of aggravating and mitigating factors, particularly keeping in mind the fact that PW 2, who suffered grievous injury, had to take

treatment as in-patient for ten days in Saktinagar Hospital and thereafter treated at N.R.S hospital, we are of the opinion that the victim must be adequately compensated while reducing the quantum of sentence of imprisonment to certain extent.

7. Accordingly, the judgment of conviction passed by the High Court against the appellants for the offences under Sections 456 and 326 of IPC both read with Section 34 of the IPC, is confirmed. The appellants are sentenced to undergo simple imprisonment for two years and to pay fine of Rs.50,000/- each in respect of offence under Section 326 of the IPC, in default, to undergo simple imprisonment for eight months. They are also sentenced to simple imprisonment for six months and a fine of Rs.10,000/- each for the offence under Section 456 of the IPC, in default thereof, to undergo simple imprisonment for two months. Both the sentences shall run concurrently. Entire fine, if deposited, shall be paid to the injured Dalil Dewan (PW-2) as compensation.

8. The appellants are entitled to the benefit of set off as contained in Section 428 of Cr.P.C. in respect of the period of detention already undergone by them.

9. With the aforesaid modifications in sentence of imprisonment and fine, the appeals are disposed of.