
(2018) 05 GAU CK 0141
In the Gauhati High Court
Case No : Crl.Rev.P. 465 of 2009

Abdul Hussain Sk. And Anr	Vs	APPELLANT
State Of Assam		RESPONDENT

Date of Decision : 24-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 325, 341

Citation : (2018) 05 GAU CK 0141

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : A. Hussain, B Das, S.Jahan

Final Decision : Partly Allowed

Judgement

1. Heard Mr. A. Hussain, learned counsel for the petitioners and Ms. S. Jahan, learned Addl. Public prosecutor for the State respondents.

2. This revision is directed against the judgment and order dated 19/11/2009 passed by the learned Sessions Judge, Dhubri in Crl. Appeal No. 5

(2)/2009. By the said judgment, learned Sessions Judge dismissing the appeal filed by the present petitioners upheld the judgment and order dated

30/03/2009 passed in GR (SSM) 157/2003, whereby the learned Magistrate convicted the accused petitioners u/s 325 IPC read with Section 34 IPC

and sentenced them to imprisonment for two years and fine of Rs. 1,000/- with default stipulation.

3. As per prosecution case, on 27/8/2003, at about 3 Oâ??clock, noticing the present petitioners causing damage to the boundary mark of their land,

when the son of the informant raised objection, both the petitioners assaulted him with stick and caused grievous injuries. They also tried to kill him.

Hearing the alarm raised by the injured, the neighbouring people gathered and

the accused persons left the place. An FIR was lodged by the father of the injured, on the basis of which, police registered a case and after usual investigation submitted charge sheet against both the petitioners u/s 341/325/34 IPC and eventually they stood trial.

4. In course of trial, learned Judicial Magistrate framed charges u/s 341/325 read with section 34 IPC, to which they pleaded not guilty. Six witnesses were examined by the prosecution to establish the charge and on appreciation of evidence, learned Judicial Magistrate convicted the petitioners u/s 325 IPC and awarded sentence as indicated above. On appeal learned Sessions Judge partly allowed the appeal reducing the substantive sentence of imprisonment from 2 (two) years to 3 (three) months.

5. Aggrieved by the said judgment of conviction and sentence, the petitioners preferred the instant appeal.

6. I have considered the submission made by the learned counsel for the petitioners and the learned Addl. P.P. Ms. S. Jahan and also perused the evidence on record.

7. PW 2, the injured Kaiz Uddin stated, in his evidence, that the informant and the accused petitioners shared the common boundary of their agricultural land. On the date of occurrence, when he found the petitioners causing damage to the boundary mark and raised objection, there was altercation and in course of such altercation, accused petitioner Abdul Zalal Sk. held him from backside and the other accused Abdul Hussain Sk. assaulted him with a dao on his left hand, which caused fracture of bone. They also dragged him to the nearby field with the intention to kill him.

However, when the neighbouring people assembled, he was left there.

8. PW 1, father of the PW 2, stated that hearing alarm raised by PW 2, he came and saw the accused persons hitting the PW 2 with lathi and on reaching the place of occurrence, he found PW 1 lying there with injuries on various parts of his body.

9. Close on the heels of the oral testimony of PW 1 and PW 2, the PW 4 deposed, that while he was in his own field, he noticed that there was initially an altercation between the petitioners and the PW 2 with regard to causing damage to the boundary mark and following such altercation both the accused petitioners assaulted the PW 2 with a stick.

10. PW 5 also stated to have seen the accused persons assaulting the PW 2. Though all these witnesses were cross-examined at length nothing

material, capable of creating any dent in the prosecution case could be elicited.

11. PW 6, the doctor, who examined the PW 2 found the following injuries :-

â??(i) A gross swelling measuring 12 cm (L) X 8 cm (b) X 4 cm in the lower third of the left forearm. Overlying abrasion and contusion present.

Area is much painful and hence X-Ray of the part suggested and X-Ray report reveals fracture bone of lower 3rd of the left klad.

(ii) A swelling measuring 8 X 6 X 3 cm in the right forearm in the middle overlying contusion present. Area is tender.

(iii) A swelling measuring 10 X 7 cm X 3 cm 3 in the left scapular region. Overlying contusion present. Area is tender.

(iv) A swelling measuring 12 X 8 cm X 4 cm 3 in front of the right part of the front of the chest. Overlying contusion present. Area is tender.

(v) Another swelling measuring 9 X 6 cm X 3 cm in the right frontal parietal region of the scalp. Overlying contusion present. Area is tender.

12. The evidence of the PW 6, the doctor is found to have reinforced the prosecution case, as deposed by PW 1, 2 and 4. On the basis of the above

evidence, learned trial court convicted the petitioners. Therefore, the conviction of the accused petitioners, as recorded by the learned trial court and

confirmed by the first appellate court, does not appear to have suffered from any illegality or irregularity requiring interference by this revisional court.

13. In fact, the learned counsel for the petitioners, has not seriously contested the case on merit. Contention of the learned counsel for the petitioners

is that having considered the facts that the occurrence took place long 15 years back and there was also provocation, as evident from the testimony of

the witnesses, the petitioners should be shown some leniency, so far the question of sentence is concerned.

14. Having considered the facts and circumstances, under which the occurrence took place, and that the accused petitioners have been facing

protracted trial for last 15 years, the submission made by the learned counsel urging for showing some leniency to the accused petitioners in respect of

sentence appears to be preponderous. It reveals from the record that the petitioners were in custody for more than 1 (one) month during investigation

and trial.

15. Having considered the totality of the facts and circumstances of the case, more particularly, the circumstances under which the occurrence took

place, I am of the view that the sentence for the period, which the petitioners had already undergone during investigation and trial, would sub-serve the

cause of justice in the instant case. Accordingly, the sentence of imprisonment is reduced to the period which the petitioners had already undergone.

So far the fine is concerned, as imposed by the court below, the same requires no interference.

16. With the above modification of the sentence, the revision petition is partly allowed.

17. The petitioners are directed to surrender before the trial court and to pay the fine or serve out the default sentence.

18. Send back the record.