
(2000) 08 GAU CK 0009
In the Gauhati High Court
Case No : Criminal Revision No. 316 of 1996

Abdul Latif @ Latif Mia and Others

APPELLANT

Vs

Kajal Das and Another

RESPONDENT

Date of Decision : 21-08-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 147, 228, 427, 448

Citation : (2001) 1 GLT 367

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : Mr. Noor Mohammad, PP, for the Appellant;

Final Decision : Dismissed

Judgement

1. When the case is called on, none appears for the accused petitioners and for the opp. Party informant. I have heard Mr. Noor Mohammad, learned PP appearing for the opp. Party No. 2 State of Assam.

2. This Criminal Revision Petition is directed against the judgment and order dated 1.6.1996 passed by the learned Sessions Judge, Karimganj in Criminal Revision No. 5(I)/95 remanding the case back for disposal on setting aside the judgment and order of acquittal dated 28.11.1994 passed by the learned CJM, Karimganj in G.R. Case No. 357 of 1990 u/s 147/448/427 IPC.

3. The prosecution case, in brief, is that on 1.4.1990 at about 10.00 A.M. accused Latib & Latif Mia along with his labourers trespassed into the shop of the informant PW1, owner of Jyoti Electrical Works situated at Kanishail, Patharkandi road and started demolishing the shop house. On being resisted by the informant, the accused persons threatened to assault him. On receipt of the FIR the police registered a case and after completion of the investigation submitted charge sheet against the accused persons under Sections 147/228/427 IPC. During trial, prosecution examined as many as six witnesses including the

informant and the Investigating Police Officer. The defence adduced no evidence and three persons were examined as court witnesses. Learned Sessions Judge found that the learned Magistrate disbelieved the evidence of the informant PW 1 with observation that "PW 1 did not know the name of the father of the vendor Srimati Jilai Bibi and he did not know the dag number, Khaitan number, holding number and the boundaries of the disputed house". Learned Magistrate further observed that "this witness (P.W.1) could not say the name of the shop house situated on the northern side beyond the shop house of accused Abdul Latif". The learned Sessions Judge found that PW 1 has stated that to the contiguous north of the place of occurrence, accused Abdul Latif was having his house, but PW 1 could not say whose shop was situated to the north of the house of Abdul Latif. The learned Sessions Judge has observed that it is a case of criminal trespass into the shop house and mischief, and it is not a civil suit for declaration of any title of the informant over the disputed shop house and in such a case there is no necessity of proving the four boundaries, dag number, khatian number etc; and hence PW 1's ignorance about the same does not shatter his credibility inasmuch as the disputed shop house can be located easily by this evidence. Similarly, learned Magistrate disbelieved the sworn testimony of PW 2 Smti Jyotsna Das with observations that she did not know the father's name of the accused Latif, did not know the Mouza pargana, dag number and patta number of the land on which the disputed shop was situated, did not know the length and breath of the disputed shop house, could not say who used what instruments to demolish the shop house. The evidence of PW3 remained unchallenged at least as regards demolition of northern wall of the shop house on the date and time of the occurrence. The Trial Court was wrong in discarding his entire evidence. The Trial Court discarded the evidence of PW 4 observing that "this witness could not recognise who came to demolish the shop house". The learned Sessions Judge, however, found that this witness nowhere in his evidence, made a statement to that effect. Nor there is anything in his evidence to arrive at such a conclusion. The trial Court misread the evidence of PW 4. The evidence of PW 5 was discarded by the Trial Court on " the ground that he could not say who did what. Learned Sessions Judge observed that in such a riotous situation it was not possible for the witness to note the particular act of a particular accused and hence the reasoning given by the trial Court for discarding evidence of PW 5, is not tenable.

4. It is true that the power of the Court of Session in a revision by a private complainant against acquittal of the accused in a police case is restricted. However, it is open to the revisional court to look into the evidence and see if the findings arrived at by the Trial Court are valid and justified. In the instant case, learned Sessions Judge found that the Trial Court discarded the evidence of the prosecution witnesses on wholly untenable grounds. I have also found that the trial court misdirected itself while appreciating evidence and there is perversity in the reasoning given by the Trial Court for discarding the evidence of the prosecution witnesses resulting in miscarriage of justice.

5. The learned Sessions Judge rightly allowed the revision, set aside the impugned judgment and order of acquittal passed by the learned Magistrate, remanded the case for fresh disposal after hearing the parties in accordance with law.

6. In the result, this revision is dismissed.

7. This Court's interim order dated 17.7.1996 staying operation of the impugned judgment and order dated 1.6.1996 passed by the learned Sessions Judge stands vacated.

8. Send down immediately the Lower Court records along with a copy of the order of this Court.