

(2018) 05 GAU CK 0088
In the Gauhati High Court
Case No : Criminal Appeal No. 208 of 2008

Abdul Samad, Samad Marandi	Vs	APPELLANT
State Of Assam		RESPONDENT

Date of Decision : 15-05-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 374(2)
Indian Penal Code, 1860 — Section 380, 458, 459

Citation : (2018) 05 GAU CK 0088

Hon'ble Judges : HITESH KUMAR SARMA, J

Bench : Single Bench

Advocate : MU Mondal, M Hussain, BJ Dutta

Final Decision : Partly Allowed

Judgement

1. This appeal, under Section 374(2) of the Cr.P.C., is preferred against the judgment and order, dated 28-11-2008, passed by learned Sessions Judge,

Dhubri, in Sessions Case No. 71 of 2005, convicting and sentencing the accused-appellants to undergo rigorous imprisonment for 7 (seven) years each

and to pay a fine of Rs.5,000/- each, in default, to suffer simple imprisonment for 3 (three) months each for the offence punishable, under Section 459

of the IPC and to undergo rigorous imprisonment for 3 (three) years each and to pay a fine of Rs.2,000/- each, in default, to suffer simple

imprisonment for 3 (three) months each, for the offence punishable, under Section 380 of the IPC. The sentences are to run concurrently.

2. I have heard Mr. M Hussain, learned counsel appearing on behalf of accused-appellants. I have also heard Mr. BJ Dutta, learned Additional Public

Prosecutor, Assam.

3. I have perused the judgment of the learned trial Court as well as the evidence

of the witnesses for the prosecution, recorded by the learned trial Court during the trial.

4. The prosecution case, in brief, is that on 17-09-2000, at midnight, the accused-appellants and others committed larking house trespass by entering into the dwelling house of Boyjan Bibi and after causing grievous hurt to her, took away an amount of Rs. 3,000/- from her possession.

5. On the basis of such facts, the PW1, Asar Ali lodged an FIR with the Golakganj Police Station, Golakganj Police Station registered a case, being No. 132/2000, under Section 458/380 of the IPC.

6. After registration of the case, investigation was carried out, and during investigation, the Investigating Police Officer examined the witnesses under Section 161 of the Cr.P.C., collected evidence and after completion of investigation, laid charge-sheet against the accused-appellants under the aforesaid sections of law.

7. The learned trial Court, after exhausting all the required formalities, framed formal charge under Sections 359/380 of the IPC, to which they pleaded not guilty, and therefore, the trial commenced.

8. After completion of the trial, the learned trial Court convicted the accused-appellants, as indicated above.

9. In this case, prosecution examined as many as 10 witnesses, including the doctor as well as the Investigating Police Officer. The defence examined none. The defence case is of total denial. In their statement, recorded under Section 313 Cr.P.C., the accused-appellants denied the fact of commission of the offence alleged.

10. I have scanned the evidence of the prosecution witnesses.

11. PW1, Md. Aser Ali, is the informant of this case. The accused-appellants, along with some others, entered into the house dwelling house of Boyjan Bibi and caused grievous hurt to her and himself and had taken away Rs.3000/-. They were given the medical treatment. This is the evidence of this witness.

12. PW3, Md. Badsh Sk, who subscribed to the evidence of PW1 stating that the accused-appellants and others entered into their house and after assaulting and causing hurt to them, had taken away Rs.3000/- Such evidence received corroboration from PW2, Mustt. Joy Gun Bibi and PW4, Ms.

Ajia Bibi, on material points.

13. The evidence of PW10, Sri Dilip Bharali, the Investigating Police Officer is of routine nature from receipt of the FIR till completion of investigation.

14. The PW5, Md. Nur Sk., PW6, Mustt. Parichand Bibi and PW7, Md. Aser Ali, are not found stating about the occurrence as they came to the place of occurrence later on.

15. Whatever it may be, the learned trial Court, relying on the consistent evidence of PW1 to PW4, convicted the accused-appellants, as indicated above.

16. I have heard the arguments of learned counsel for the accused-appellants. During the course of argument, the learned counsel for the accused-appellants has submitted that although there are some materials in the evidence against the accused-appellants, yet the materials are not beyond reasonable doubt; hence, they should be acquitted and the order of conviction and sentence passed by the learned trial Court be set aside.

17. The learned Additional Public Prosecutor submits that the evidence of PW1 to PW4 are so consistent that the same leaves no manner of doubt about commission of the offences by the accused-appellants and there is no reason to interfere with the judgment and order passed by the learned trial Court.

18. It is submitted that the accused-appellant, Abdul Hamid has already undergone the period of sentence in jail and he is, as per the record, out of jail now. The accused-appellant, Abdul Samad @ Samad Marandi was in jail during investigation and trial for about four months and 13 days.

19. Considering the nature of offences alleged and the involvement of the accused-appellants, in the considered view of this Court, if the substantive sentence of the accused-appellant, Abdul Samd @ Samad Marandi is reduced to the period already undergone, will meet the ends of justice.

Accordingly, the sentence of the accused-appellant, Abdul Samd @ Samad Marandi is reduced to the period already undergone and the sentence imposed against the accused-appellant, Abdul Hamid is retained.

20. Accordingly, the appeal is partly allowed.

21. Send down the LCR along with a copy of this judgment and order.