

(2018) 05 GAU CK 0142
In the Gauhati High Court
Case No : Crl.Rev.P. 450 of 2009

Abu Tayab Md. Siddique And Anr.

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 24-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 147, 323, 324, 325

Citation : (2018) 05 GAU CK 0142

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : F K R Ahmed

Final Decision : Partly Allowed

Judgement

1. Heard Mr. M.K. Hussain, learned counsel for the petitioners and Ms. S Jahan, learned Addl. PP, Assam.

2. This revision is directed against the judgment and order dated 21.11.2009, passed by the learned Sessions Judge, Morigaon in Criminal Appeal

No.5/2009. By the said judgment, learned Sessions Judge dismissing the appeal filed by the petitioners upheld the judgment and order dated 29.01.2009

passed in GR Case No.129/2004, whereby the learned Addl. Chief Judicial Magistrate convicted the accused petitioners under Sections 325/323 IPC

and sentenced them to RI for 1 (one) year each with fine of Rs.1,000/- under Section 325 IPC and fine of Rs.300/-with default stipulation under

Section 323 IPC.

3. As per the prosecution case, on 06.03.2004 at about 7.30 pm, when the father of the informant Abdul Kadir was going to market, all the accused

persons named in the FIR assaulted him. The accused Abu Tayab hit him on his head with a road. When the informant tried to save him, the accused

Taher hit him on his back with a dagger and caused injury. An FIR was lodged by PW-2, Jahirul Islam, on the basis of which, police registered a case

and after usual investigation laid charge-sheet against 11 of the accused persons named in the FIR and all the accused persons stood trial.

4. In the course of trial, learned Addl. Chief Judicial Magistrate framed charges against all the accused persons under Sections 147/324/323 IPC to

which they pleaded not guilty. The prosecution examined 12 witnesses to establish the charges and on appreciation of evidence, learned Addl. CJM

convicted all the accused persons including the present petitioners under Section 147/323/325 IPC and sentenced them to imprisonment for 1 (one)

year and fine of Rs.1000/- with default stipulation under Section 325 IPC, fine of Rs.200/- under Section 147 IPC and Rs.300/- under Section 323 IPC

with default stipulation.

5. Aggrieved by the said judgment of conviction and sentence all the convicted accused persons preferred appeal before the learned Sessions Judge

and learned Sessions Judge by the impugned judgment, acquitted 9 of the convicts and upheld the conviction of the petitioners Abu Tayab under

Section 325 IPC and Abu Taher under Section 323 IPC.

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

7. I have considered the evidence brought on record and the submission made by the learned counsel for the revision petitioners and the learned Addl.

PP, Assam.

8. The learned counsel for the revision petitioner has not contested the prosecution case on merit, so far the conviction of the accused petitioner Abu

Taher is concerned. The contention of the learned counsel for the revision petitioner is that there was no legal evidence to record conviction under

Section 325 IPC against accused Abu Tayab, inasmuch as, the medical evidence did not disclose any definite finding with regard to grievous hurt

alleged to have been caused to Abdul Kadir.

9. In view of the submission of the learned counsel it would be appropriate to go through the medical evidence at the outset.

10. The doctor who attended the injured was examined as PW-12. According to the doctor, the following injuries were found on the body of Abdul

Kadir and Jahirul Islam Abdul Kadir An incised wound measuring 1½" —

1½" in size on the right parietal region nearer to occipite
 parietal joint with active bleeding which is profuse in nature. The patient was
 admitted to hospital vide indoor registration No.80/04. As indoor patient
 was referred to MCH/NCH for APN & lat view of the skull bones to exclude body
 injury. Report was suspected fracture of the skull none. Patient
 was also known case of D.M.(diabetes Mellitus) with urine sugar 4th Had
 secondary infection of the wound for which he was treated as indoor &
 discharged on 27.03.2004 at about 1 pm. Opinion : The injury was fresh,
 grievous in nature. Considering his incapacitation for 22 days from his natural
 duties and day to day life activity and the radiological report saying suspected
 fracture of skull bone. Jahirul Islam An incised wound 1½" in size on the right occipital region with active bleeding. No other injury.
 Opinion : The injury was fresh, simple in nature and caused by a sharp
 cutting weapon.

11. From the above medical evidence of PW-12 and the injury report Exhibit-3, it
 is apparent that there was no conclusive finding of the doctor, as to
 whether, the alleged injury on the skull had any fracture. The doctor stated that
 fracture was suspected. Thus the medical evidence demonstrates that
 it was only a suspicion of the doctor, that the fracture might have been caused.
 In a criminal case, one cannot be convicted on the basis of suspicion.
 Though the medical evidence demonstrated that hurt was caused to both Jahirul
 Islam and Kadir, the prosecution evidence falls short of proving the
 factum of grievous hurt. Since causing of grievous hurt has not been proved
 beyond reasonable doubt, the conviction under Section 325 IPC of the
 accused petitioner Tayab Ali cannot be maintained. So far as the conviction of the
 other accused/appellant Abu Taher is concerned, the conviction
 and sentence of this accused is not contested. Though evidence was inadequate
 to establish a charge under Section 325 IPC against Tayab, the
 medical evidence and the testimony of ocular witness clearly established the
 ingredient of offence under Section 323 IPC and as such, the conviction
 of Abu Tayeb deserves to be reduced to section 323 IPC and accordingly, he is
 convicted under Section 323 IPC and sentenced to pay fine of
 Rs.300/-, in default, to imprisonment for 15 (fifteen) days.

12. With the above modification in the conviction and sentence, the revision
 petition is partly allowed.

13. The petitioners are directed to surrender before the learned trial Court and to pay the fine or serve out the default sentence.
14. The bail bond if any, stands discharged. Send back the LCR.