
(1960) 01 GAU CK 0003
In the Gauhati High Court

Akham Amusakthi Singh and Another	APPELLANT
Vs	
Union Territory of Manipur	RESPONDENT

Date of Decision : 28-01-1960

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 323, 326, 34, 342

Citation : (1961) CriLJ 104

Hon'ble Judges : T.N.R. Tirumalpad, J.C.

Bench : Single Bench

Judgement

T.N.R. Tirumalpad, J.C.

1. The two petitioners, who were accused 1 and 2 in the Magistrate's Court were charged u/s 326 I.P.C. that on 23-11-56 they voluntarily caused grievous hurt by an instrument for cutting, to wit a kind of Dao, to Maibam Sarnpaha Singh alias Sampha Singh. There was a third accused one Mingthoujam Selungba Singh, against whom a charge u/s 326 read with Section 34 I.P.C. was framed alleging that he abetted the two petitioners in voluntarily causing grievous hurt. This accused died in the course of the trial and the case proceeded only against the two petitioners in the Magistrate's Court. One fails to understand, however, how for abetment of an offence a charge u/s 34 happened to be framed against the 3rd accused. The charge ought to have been u/s 109 I.P.C. But it is not very material now as the said accused is dead.

2. The charge against the two petitioners was for causing grievous hurt only to one person namely Maibam Sampha Singh, who was P.W. 5 in the case. But the Magistrate's Court as well as the appellate Court have dealt with the case as if the charge was for causing grievous hurt to P.W. 4 Kokil Singh and to P.W. 5 Sampha Singh. I also find that throughout the trial, all the P.Ws. have mentioned about the injuries caused to P.Ws. 4 and 5. Even the doctor P.W. 12 was made to speak of the injuries to both P.Ws. 4 and 5 and the Medical reports Exts. P/6 and P/7 in respect of both of them were marked at the trial.

3. In discussing the evidence, the learned Magistrate has treated as if the charge against the petitioners was for causing hurt to P.Ws. 4 and 5. In questioning the accused u/s 342, the Magistrate has again treated as if the charge and evidence against them was of causing grievous hurt to both P.Ws. 4 and 5. The learned Sessions Judge has also dealt with the appeal of the petitioners again as if the charge was for causing grievous hurt to P.Ws. 4 and 5.

4. I expect the lower Courts to bestow much more attention to the charge framed against the accused" persons than what has been done in the present case. Otherwise there is likelihood of gross miscarriage of justice, If it was found that the charge as originally framed was defective and omitted the grievous hurt caused to P.W. 4, it was the duty of the Magistrate to amend the charge suitably and read and explain it to the accused persons before proceeding with the trial. The appellate Court also is expected to go through the charge framed against the accused and the evidence recorded at the trial and see that there has been a proper trial on the charge framed against the accused.

It appeared from the way in which the trial and the appeal proceeded that neither the Magistrate nor the appellate Court looked into the charge at all. It is seen that the charge was framed by one Magistrate, while the actual trial took place before another Magistrate. The attention of the Magistrate is drawn to Chapter XIX of the Cr.P.C. dealing with the form of charges.

5. Another objectionable feature in this trial was that while the charge against the two petitioners was framed only u/s 326 I.P.C., they were convicted by the Magistrate u/s 326 read with Section 34 I.P.C. The learned Magistrate remarked that though Section 34 I.P.C. was omitted in the charge, both the accused were liable under Secs. 326/34 I.P.C. as they had the common intention to cause grievous hurt to P.Ws. 4 and 5 and that the absence of a charge u/s 34 I.P.C. was curable by Section 537 Cr.P.C. and that he was satisfied that the accused were not misled or prejudiced in any way by the said omission.

6. This is certainly not the way to conduct the proceedings in the Magistrate's Court. Nor had the Magistrate any authority to say that the defect in the procedure in his own Court would be curable by Section 537 Cr.P.C. That is a matter for the Courts exercising appellate or revisional powers to decide. When in the course of a trial, the Magistrate finds at any time before judgment is pronounced that the trial has proceeded on imperfect or erroneous charges, it is the duty of the Magistrate to alter or amend the charge and read and explain the altered or amended charge to the accused and recall the witnesses if either the prosecutor or the accused persons want it and to further examine the witnesses with respect to the altered or amended charge. The attention of the Magistrate is drawn to Secs. 226 to 231 of the Cr.P.C. It is meaningless for him to say that the failure on his part to discharge his duties properly will be cured by Section 537 Cr.P.C. as the said section relates only to the Courts exercising Appellate or Revisional jurisdiction.

7. This aspect of the matter seems to have been lost sight of by the Appellate Court when the case came up before it in appeal. So, what this Court has now got to see is whether the error on the part of the Magistrate has in any way misled the accused persons in their defence within the meaning of Section 232 Cr.P.C. or whether it has occasioned a failure of justice u/s 537 Cr.P.C.

8. As far as the 2nd petitioner Ninglhoujam Angoumacha Singh is concerned, there is no difficulty, as it was clear from the prosecution evidence that he was armed with the Dao and that P.W. 5 Sampha Singh had received six injuries, out of which four were incised wounds, which could only be caused by the Dao. The learned Sessions Judge stated by mistake that there were seven injuries on Sampha Singh. It is true that the lower Courts had taken into consideration that fact that Kokil Singh P.W. 4 had also received three incised wounds which could only be caused by a Dao against Angoumacha Singh, Even if we omit the evidence as far as P.W. 4 is concerned altogether, there was sufficient evidence before the Magistrate's Court to bring home the charge u/s 326 I.P.C. against Angoumacha Singh of having caused grievous hurt to P.W. 5, which was the charge framed against him. Angoumacha Singh had also full notice of the said charge which had been read out and explained to him.

Hence no failure of justice has been occasioned as far as Angoumacha Singh is concerned, even though evidence irrelevant to the charge was adduced against him and the Magistrate's Court also took into consideration such evidence. There was enough material to convict Angoumacha Singh on the charge u/s 326 I.P.C. Section 34 I.P.C. was quite unnecessary to convict Angoumacha Singh as he was the person armed with the Dao and the four incised injuries to Sampha Singh, P.W. 5 which were certainly of a grievous nature were caused by the said Dao.

9. The difficulty arises only in respect of Akham Amusakthi Singh, the first petitioner before me. He was armed only with a Wakok or bamboo stick which cannot cause an incised wound. The evidence of the doctor P.W. 12 showed that Sampha Singh had only two injuries, namely, injury Nos. 3 and 4 which were mere scratches caused by a blunt instrument like a Wakok. Only these two wounds could have been caused by the first petitioner Amusakthi Singh. But Amusakthi Singh has been convicted of causing grievous injuries with a sharp instrument, namely, a Dao on the ground that u/s 34 I.P.C. the injuries though actually caused by Angoumacha Singh were the result of the common intention of the two petitioners to commit the said offence.

10. The question is whether there was any such evidence of common intention to cause grievous hurt to P.W. 5. The learned Magistrate has not discussed the evidence in support of the said common intention as against Amusakthi Singh. This was all the more necessary as the Magistrate was convicting the first petitioner u/s 326 I.P.C. read with Section 34 I.P.C. without framing a charge u/s 34 I.P.C. on the ground that the evidence disclosed that there was such common intention. I find that even in questioning Amusakthi Singh u/s 342 Cr.P.C. the Magistrate has not put the evidence of the P.Ws. regarding the common intention

to the first petitioner. The question put was whether it was a fact that on 23-11-58 he with Angoumacha Singh voluntarily caused grievous hurt with Dao and stick to Kokil and Sampha Singh while the latter were preparing for harvesting in the field. This question, in fact, was a misleading question as there was no evidence against Amusakthi Singh that he caused any grievous hurt to P.W. 5 with a Dao. No grievous hurt at all had been caused to P.W. 5 with the Wakok which the first petitioner had.

Thus it is clear that in questioning the first petitioner u/s 342 Cr.P.C. the Magistrate did not give him any indication that he was being sought to be convicted u/s 326 read with Section 34 I.P.C. Actually, as I stated earlier, a charge u/s 326 read with Section 34 I.P.C. was framed against the third accused who then pending the trial. Thus, the entire trial against the 1st petitioner has proceeded on the basis that he was independently guilty u/s 326 I.P.C. for having caused grievous hurt with the Dao and stick to P.Ws. 4 and 5. Hence it follows that the conviction and sentence of the first petitioner Amusakthi Singh u/s 326 read with Section 34 cannot stand as there would be substantial failure of justice u/s 537 Cr.P.C. if the conviction was sustained.

The failure of duty on the part of the Magistrate to frame a proper charge, even though he knew before the delivery of judgment that the charge was defective, has most certainly prejudiced the 1st petitioner in his defence, as he was not given a proper opportunity to meet the charge under which he was convicted.

11. At the same time, one cannot lose sight of the fact that the two petitioners went along with the 3rd accused (since dead) to the field where P.W. 5 was working armed with weapons and in the course of the same incident both of them caused independent injuries to P.W. 5 Sampha Singh, the four injuries caused by Angoumacha Singh being grievous, while the two injuries caused by Amusakthi Singh were simple in nature. Thus, it is clear that though the first petitioner Amusakthi Singh may not be found guilty u/s 326 read with Section 34 I.P.C. he was certainly guilty u/s 323 I.P.C. of voluntarily causing hurt to P.W. 5., independent of Section 34 I.P.C.

The prosecution evidence has clearly established this beyond any shadow of doubt. The first petitioner is, therefore, found guilty u/s 323 I.P.C. and convicted under the said section. The sentence of six months' R. I. and fine of Rs. 50/- or in default one month's R. I. imposed on him by the Magistrate u/s 326/34 I.P.C. is imposed against him for his conviction u/s 323 I.P.C.

12. The learned Sessions Judge in appeal in dismissing the appeal of the petitioners has stated that a notice will go to them why recommendation should not be made to this Court for enhancement of the sentence. But he appears to have taken no further steps in the matter. It was the duty of the appellate Court to have specifically referred the question of enhancement of sentence to this Court if he considered that an enhancement was called for instead of merely mentioning it in his judgment. It was not necessary u/s 438 Cr.P.C. to have

ordered the issue of a notice to the accused persons before the recommendation was made particularly, when he had examined the records of the proceedings in the course of the appeal.

13. As far as the second petitioner Ninglhoujam Angoumacha Singh is concerned, the sentence of 6 months" R. I. and a fine of Rs. 50/- for having caused grievous hurt with a weapon of offence, which was likely to cause death and for which imprisonment for life or for a term which may extend to 10 years" R. I. was prescribed u/s 326 I.P.C. is extremely inadequate. A notice will therefore go to the second petitioner Ningtboujam Angoumacha Singh to show cause why the sentence passed against him by the Magistrate should not be enhanced.

14. The revision petition is dismissed except to the extent indicated above, namely, that the conviction of the first petitioner Akham Amusakthi Singh u/s 326 read with Section 34 I.P.C. is set aside and he is convicted u/s 323 I.P.C. and awarded the same sentence as imposed by the Magistrate.