

(2012) 07 GAU CK 0067

In the Gauhati High Court

Case No : Criminal Rev. Petition No. 282 of 2004

Amirul Islam Choudhury and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 323, 34, 409, 506

Citation : (2012) 5 GLT 260

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : A. Choudhury, Mrs. D.R. Deka and Mr. I. Islam, for the Appellant; K. Munir, Addl. PP, for the Respondent

Judgement

I.A. Ansari, J.—By judgment and order, dated 22.5.2002, passed, in CR Case No. 1428/89, by the learned Chief Judicial Magistrate, Karimganj, all the accused-petitioners were convicted under Sections 323 and 506 read with Section 34 IPC, except accused-petitioner No. 1, namely, Md. Amirul Islam Choudhury, who, apart from being convicted under Sections 323 and 506 read with Section 34 IPC, was also convicted u/s 409 IPC and all the accused-petitioners were, for their conviction u/s 323 read with Section 34 IPC, sentenced to suffer rigorous imprisonment for a period of 1 (one) year each and also to pay, for their conviction u/s 506 read with Section 34 IPC, fine of Rs. 1,000/- each. Besides the sentences aforementioned, accused-petitioner No. 1, namely, Md. Amirul Islam Choudhury, was also convicted u/s 409 IPC and he was sentenced to suffer, for his conviction u/s 409 IPC, rigorous imprisonment for 4 (four) years with fine of Rs. 5,000/- and, in default of payment of fine, suffer rigorous imprisonment for a period of 60 (sixty) days. Aggrieved by his conviction and the sentence, passed against him, while the accused-petitioner No. 1, namely, Md. Amirul Islam Choudhury, preferred an appeal, which gave rise to Criminal Appeal 10(2)/2002, another appeal was preferred by the remaining convicted persons, who are accused Nos. 2, 3 and 4 herein, and this appeal gave rise to Criminal

Appeal No. 16(2)/2002.

2. Both the appeals were disposed of together by a common judgment and order, dated 05.05.2004, passed by the learned Sessions Judge, Karimganj, whereby, while the conviction of all the accused-petitioners, u/s 506 read with Section 34 IPC, was set aside and they were all acquitted of the same, accused-petitioner Nos. 2,3 and 4 aforementioned were sentenced, for their conviction u/s 323 IPC read with Section 34 IPC, to pay fine of Rs. 1,000/-each and, in default of payment of fine, suffer rigorous imprisonment for a period of 30 (thirty) days; but the conviction of the accused-petitioner No. 1, namely, Amirul Islam Choudhury, u/s 409 IPC and the sentence, passed against him, were maintained. Still feeling aggrieved, all the accused-persons put to challenge, with the help of this revision, the findings of guilt, arrived at against them, their conviction and the sentences passed against them.

3.1 have heard Mr. A. Choudhury, learned counsel for the accused-petitioners, and Mr. K. Munir, learned Additional Public Prosecutor, Assam.

4. While considering the present revision, it needs to be noted, at the very outset, that so far as the accused-petitioner No. 1, namely, Md. Amirul Islam Choudhury, is concerned, he is no longer alive and none of his legal representatives has expressed willingness to be substituted in his place and, hence, this revision stands abated to the extent that the same relates to the accused-petitioner No. 1, namely, Md. Amirul Islam Choudhury.

5. This revision has, therefore, been heard, on behalf of the remaining three accused-petitioners, namely, Khairul Islam Choudhury, Samsul Islam Choudhury and Sirajul Islam Choudhury, who stand, in the light of the appellate judgment, convicted u/s 323 read with Section 34 IPC and sentenced, as already indicated above, to pay fine of Rs. 1,000/- each and, in default, to undergo rigorous imprisonment for a period of 30 (thirty) days.

6. It is the legality of the conviction, u/s 323 IPC read with Section IPC, and the sentence, passed against the accused-petitioner Nos. 2,3 and 4, namely, Khairul Islam Choudhury, Samsul Islam Choudhury, and Sirajul Islam Choudhury, respectively, which have been assailed, in this revision, at the time of hearing.

7. While considering the question as to whether the conviction of the surviving accused-petitioners is or is not sustainable in law, it is worth pointing out that Amirul Islam Choudhury (since deceased) was the brother of the present three surviving accused-petitioners, namely, Khairul Islam Choudhury, Samsul Islam Choudhury and Sirajul Islam Choudhury and, at the relevant point of time, while Amirul was the Head Teacher of Janasheva L.P. School, accused-petitioner No. 4, namely, Sirajul, was the Head Teacher of the Maizgram L.P. School.

8. The case of the prosecution, as unfolded at the trial, may, in brief, be described thus: Both the schools aforementioned received a sum of Rs. 61,065/- each from the Government of Assam for construction of school building. The

complainant was a member of the work committee of Janasheva L.P. School. Though permission had been given to the Head Teacher of Janasheva L.P. School by the Managing Committee thereof to withdraw the sanctioned amount for construction work and though sanctioned amount had been withdrawn by Amirul Islam Choudhury (since deceased) as Head Teacher of Janashabha L.P. School, no construction work was done. On a complaint made, in this regard, by the complainant, Nazrul Islam Choudhury, accused Amirul Islam Choudhury (since deceased) was placed under suspension. Angered by the fact that Amirul Islam Choudhury (since deceased) had been placed under suspension on the basis of the complaint made by the complainant, namely, Nazrul Islam Choudhury (PW1), when the complainant, on 17.08.1989, at about 4-30 p.m., reached, on his way to Karimganj, Panchayat Road, accused Khairul Islam Choudhury restrained him, on the road, with a lathi in his hand and asked him (complainant) as to why he got Sirajul Islam Choudhury suspended. On the denial of the complainant that he had any hand in the suspension of Sirajul Islam Choudhury, accused Sirajul gave a blow by lathi on the person of the complainant, but the complainant managed to hold the lathi. Thereafter, all the remaining accused, including Amirul Islam Choudhury (since deceased), came rushing to the place of occurrence. While accused Shamsul Islam gave a blow by a lathi on the complainant, accused Shirajul Islam Choudhury and accused Amirul Islam Choudhury gave the complainant fist blows, kicked him and threatened him. When the neighbours came to the place of occurrence, the complainant proceeded towards his house, but all the accused persons followed him up to his house; and they kept threatening him. The complainant sustained injuries and he took his treatment at Girishganj Hospital. Thereafter, the complainant lodged a complaint, which gave rise to Complaint Case No. 1428 of 1989.

9. At the trial, charges, under Sections 323 and 506 read with Section 34 of the IPC, were framed against all the accused persons. In addition thereto, a charge, u/s 409 IPC, was framed against accused Amirul Islam Choudhury (since deceased). All the accused pleaded not guilty to their respective charges.

10. In support of their case, prosecution examined altogether 7 witnesses. The accused were, then, examined u/s 313 Cr.P.C. and, in their examinations aforementioned, they denied to have committed the offences, which they were alleged to have committed, the case of the defence being that of total denial. No evidence was adduced by the defence.

11. Having, however, found the accused guilty of the charges, which had been framed against them, as pointed out above, the learned trial Court convicted them accordingly and passed sentences against them as mentioned above. As the appeals, which had been preferred, did not yield the desired result, all the convicted persons came to this Court with the present revision.

12. While considering the revision, it is pertinent to note that it is in the backdrop of concurrent findings of facts that the present revision needs to be considered.

13. It is also extremely important to bear in mind that it has not been in dispute that accused Amirul Islam and Sirajul Islam were placed, as indicated above, under suspension. It was, therefore, not unnatural, on the part of the four accused afore-mentioned, to bear, as against the complainant, a grudge, when the complainant had made a complaint that no construction of the school building had taken place despite the fact that the sanctioned amount had been withdrawn.

14. The complainant (PW1) has deposed, in his evidence, that on 17.8.1989, at about 4 p.m., when he reached Panchayat Road, on way to Karimganj, accused Khairul restrained him, on the way, holding a lathi in his hand and attempted to assault him, but he restrained the said accused by holding the lathi, whereupon the remaining 3 accused came and accused Samsul, being armed with lathi, gave a blow on PW1, while accused Sirajul and Amirul gave him fist blows.

15. Nothing of significance was elicited from the cross-examination of PW1 to show that what he had deposed was untrue or false. The evidence, given by PW1, was well corroborated, as pointed out by the learned appellate Court, by the evidence of PW1's neighbour, PW3, whose evidence was to the effect that he saw, on the day of the occurrence, accused Khairul @ Muku loitering at Panchayat Road with lathi in his hand and, sometime, thereafter, when the complainant came to Panchayat Road, accused Khairul restrained the complainant and an altercation took place between them and, then, accused Khairul gave blow with his lathi, but the complainant resisted by holding the lathi in his hands and, in the meanwhile, the other accused persons came there and started assaulting the complainant. It is in the evidence of PW3 that PW1 sustained injury on his head.

16. Even the evidence of PW3 could not be shaken, in his cross-examination, by the defence. In fact, the evidence of PW3 remained virtually intact in his cross-examination

17. So far as PW4 is concerned, his evidence is that on 17.8.1989, at about 4 p.m., when he reached Panchayat Road from his house, he found accused Muku (i.e. Khairul) giving a blow by a lathi on PW1 and, in the meantime, other accused came and assaulted PW1. Amongst the accused, according to PW4, accused Sirajul and Amirul gave fist blows and accused Kairul and Samsul dealt lathi blows on the person of complainant and, as a result thereof, PW1 sustained injuries.

18. The evidence of PW4 remained unshaken in the material aspects in his cross-examination

19. Thus, the evidence, given by PW1, that he had been assaulted by the said accused persons remained wholly unshaken and received credible corroboration.

20. In the circumstances mentioned above, the learned trial Court had justifiably reached the conclusion that the said four accused persons were proved to have

assaulted and caused hurt to PW1. The finding of guilt, so reached against the four accused persons, was, in the light of the evidence on record and the law relevant thereto, fully justified. Consequently, the conviction of the said four accused persons, u/s 323 read with Section 34 IPC, was wholly legal and has rightly not been interfered with by the learned appellate Court.

21. Coupled with the above, even the sentence, as modified by the learned appellate Court cannot be described to be harsh, excessive and/or unreasonable, irrational or illegal.

22. In the considered view of this Court, therefore, the conviction of the accused-petitioners and the sentence, passed against them, do not suffer from any infirmity, legal or factual

23 Because of what have been discussed and pointed out above, this revision is wholly without merit and is hereby accordingly dismissed. Send back the record.