
(2018) 05 GAU CK 0164
In the Gauhati High Court
Case No : Crl.Rev.P. 430 of 2009

Bijoylal Chouhan

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 17-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 325, 447
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2018) 05 GAU CK 0164

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : M.H Choudhury, S Jahan

Final Decision : Allowed

Judgement

1. Heard Mr. M.H. Choudhury, learned counsel for the petitioner and Ms. S Jahan, learned Addl. PP, Assam.

2. This revision is directed against the judgment and order dated 31.10.2009 passed by the learned Addl. Sessions Judge, FTC, Nagaon in Criminal

Appeal No.18(N)/2007. By the said judgment, learned Addl. Sessions Judge dismissing the appeal filed by the present petitioner, upheld the conviction

and sentence passed by the learned SDJM, Kaliabor, whereby the petitioner was convicted under Section 325 IPC and sentenced to imprisonment for

1 (one) year and fine of Rs.1,000/- with default stipulation.

3. As per the prosecution case, on 13.03.2005 at about 7.00 am, the accused persons Shankar Chouhan, Hiriya Chouhan, Bijoylal Chouhan and Sanjay

Chouhan armed with dao, lathi etc came to the courtyard of the injured Madan Chouhan and mounted assault on him and his wife Munni Chouhan

causing serious injuries on the right eye of Madan Chouhan. PW-1 Gajen

Chouhan lodged the FIR, exhibit-1, on the basis of which, police registered a case and after usual investigation submitted charge-sheet against the three accused persons named in the FIR except Sanjay Chouhan and eventually all of them stood trial.

4. In the course of trial, learned Judicial Magistrate framed charges against all the three accused persons including the present petitioner under Section 447/323/325 IPC read with section 34 IPC, to which they pleaded not guilty. 8 (eight) witnesses were examined by the prosecution to establish the charges. On conclusion of the prosecution evidence, the accused persons were examined under Section 313 Cr.P.C and in course of such examination, the accused persons took the plea of innocence and examined one witness in their defence. On appreciation of evidence, learned JMFC convicted the present petitioner under Section 325 IPC and the co-accused Shankar Chouhan under Section 323 IPC and awarded sentence as indicated above. However, learned Magistrate acquitted the co-accused Hiriya Chouhan of all the charges.

5. Aggrieved by the conviction and sentence, the present petitioner and the co-accused Shankar Chouhan preferred an appeal before the learned Addl. Sessions Judge and learned Addl. Sessions Judge by the impugned judgment, upheld the conviction and sentence awarded by the learned Magistrate.

6. Aggrieved by the appellate judgment, the petitioner preferred the instant revision petition.

7. Mr. M.H. Choudhury, learned counsel for the revision petitioner submits that there was no legal evidence to convict the present petitioner under Section 325 IPC inasmuch as, the prosecution has not been able to prove beyond all reasonable doubt that the grievous injury received by PW-3 was inflicted by the present petitioner, more particularly, when the common intention was not proved and the learned trial Court convicted the accused persons on individual liability. It is also pointed out that there were two medical certificates as to the examination of present petitioner containing inconsistent opinion. In the medical certificate issued initially by the doctor, who examined the injured immediately after the occurrence, no fracture injury was detected, however, subsequently, another certificate was issued from a private nursing home, where the doctor mentioned about fracture of

frontal bone.

8. I have perused the evidence brought on record. Out of the eight witnesses, PW-1, PW-3, PW-4 & PW-5 appears to be vital as they were projected

as eye witness of the occurrence.

9. According to PW-1 the informant, hearing â??hallaâ?? he came to the place of occurrence and found Shankar Chouhan and Bijoylal Chouhan

having sticks and piece of timber on their hand and they were quarrelling with the father of PW-1. He intervened and dispersed them. Later on he

came to know that Shankar, Bijoy and Hiriya assaulted Madan who sustained injuries on his eye and accordingly, he lodged the FIR.

10. According to PW-3, the injured, on being called by his brother, he came and found the wife of Shankar standing there with a stick and his father

was also there. When he asked the wife of Shankar not to assault his father, Shankar arrived there and assaulted him with a lathi. He resisted the

attack and at that point of time, Bijoylal also arrived there and dealt him a blow with the timber in his hand and he fell down.

11. According to PW-4, Hiriya Chouhan, Bijoylal Chouhan and Shankar Chouhan assaulted her husband PW-3 with a battam (piece of timber). When

he tried to resist them, Shankar assaulted him. According to her, all the three accused persons assaulted PW-3 and he sustained injuries.

12. According to PW-5, initially her brother assaulted her grandfather i.e., father of Madan Chouhan and hearing alarm raised by his grandfather,

Madan Chouhan arrived there. At that time, Shankar Chouhan also came with a piece of timber in his hand and attempted to assault and on that point

of time Bijoylal Chouhan came and assaulted Madan and he fell down. She also stated that her father sustained injury in his eye.

13. PW-2 stated that while he was sitting in the verandah of his house, Shankar and Bijoylal dragged him outside the house and hearing alarm raised

by him, Madan arrived there. At that time Hiriya, Bijoylal and Shankar and another person armed with lathi, dao etc came there and assaulted Madan

with the piece of timber.

14. A dispassionate scrutiny of oral testimony of the witnesses makes it appear that initially quarrel took place between the father of Madan Chouhan,

Shankar and Bijoylal and the other accused persons arrived there in course of the quarrel and assaulted Madan Chouhan and his father Joyram. What

therefore revealed from the prosecution evidence is that initially quarrel took place between Joyram (PW-2) on one side and Sankar and Bijoy on the other side and the others assembled there hearing hue and cry or alarm raised by PW-2. In view of the above evidence, there was no reason for

assuming that all the accused named in the FIR had any common intention to cause injury to the PW-3, Madan Chouhan, and therefore, the learned

trial Court and also the appellate Court rightly came to the conclusion that elements of common intention was absent and therefore, convicted the

present petitioner and the other accused persons on the basis of their individual overt act. As per PW-6, who examined the injured Madan Chouhan

found the following injuries:

1. Lacerated injury of 6 cm Ã— 2 cm Ã— 5 cm over scalp over (R) parietal bone.
2. Lacerated injury of 5 cm Ã— 3 cm Ã— 1 cm of right side of forehead.
3. Lacerated injury (R) pinch of ear over mastoid region of 3 cm Ã— 1 cm Ã— 5 cm.
4. Bruise over (R) side of chest air cavity.
5. Black eye (R).

15. According to doctor, all the injuries sustained by the injured Madan Chouhan were simple and suspecting head injury, he referred the patient to

Civil hospital. There is no material to show that the injured attended the Civil Hospital as per advice of PW-6. However, from the evidence of PW-7,

another doctor who happens to be the Superintendent of a private nursing home, it transpires that he examined the injured, Madan Chouhan later, and

found only a bruise on the chest, fracture on frontal bone.

16. From the two injury reports it appears, that although according to PW-6, there were various injuries on the body of PW-3, the evidence of PW-7,

the doctor of the private nursing home, does not reflect the other injuries which were detected on the previous day report and according to him only

bruise over chest and fracture of frontal bone were found. Therefore, the variance between two reports raises a question mark about their reliability

and necessarily cast doubt on the nature of injuries, more particularly, the grievous hurt or fracture of frontal bone of the PW-3. It is also evident that

according to PW-2 & PW-4, all the accused persons assaulted the PW-3 with wooden stick. Thus the oral testimony of the eye witness also falls

short of proving conclusively and beyond reasonable doubt that the fracture injury sustained by PW-3 was inflicted by the accused and none other.

17. Since the elements of common intention was not there, unless it is proved beyond reasonable doubt that the fracture was caused by Bijoylal alone,

he could not be convicted under Section 325 IPC for causing grievous hurt or at least he would be entitled to benefit of doubt on the facts and

circumstance of case, so far, causing grievous hurt to PW-3 was concerned. It is settled position of law that there is a long distance between may and

must. Mere proving that petitioner might have caused the injury is not sufficient to convict him.

18. What therefore crystallizes from the evidence discussed herein before is that the prosecution evidence was grossly inadequate to fix the

responsibility on petitioner Bijoylal for causing grievous hurt under section 325 IPC. Therefore, in absence of evidence to prove beyond reasonable

that grievous hurt was caused by this petitioner alone, his conviction under Section 325 IPC is not sustainable. The petitioner could be convicted at

best under Section 323 IPC on the basis of the evidence brought on record and not under Section 325 IPC.

19. Being of the above view, the conviction of the accused petitioner is modified to section 323 IPC.

20. It appears from the record that the petitioner was behind the bar for about 2 (two) months during investigation and trial and as such, so far the

question of sentence is concerned, the period which he has already undergone in custody would meet the ends of justice. Accordingly, the petitioner is

sentenced to the period which he had undergone during investigation and trial under section 323 IPC.

21. With the above modification the conviction and sentence, the petition is partly allowed. Bail bond if any, stands discharged.

22. Send down the LCR.