
(1987) 07 GAU CK 0011
In the Gauhati High Court

Hadis Mia

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 01-07-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 394, 401
Penal Code, 1860 (IPC) — Section 319, 320, 323, 325

Citation : (1988) CriLJ 1459

Hon'ble Judges : R.K. Manisana Singh, J

Bench : Single Bench

Judgement

Manisana, J.—This revision petition arises from the judgment and order dated 14 June 1982 passed by the learned Additional Sessions Judge Sibsagar at Jorhat in Criminal Appeal No. 11(3) of 1981 affirming the conviction and sentences passed by the learned Judicial Magistrate of the 1st Class Golaghat in G. R. Case No. 1262 of 1979.

2. The case of the prosecution was that, on 5 August 1979, Hadis Mia and his three sons, namely, Arju alia Azimuddin, Shamsul and Majla assaulted Ali Hussain with the pieces of wood. On trial, the learned Magistrate convicted the accused Hadis and Arju u/s 325, IPC and sentenced them to R.I. for 6 months with fine of Rs. 500/- each. The learned Magistrate also convicted Shamsul and Majla u/s 323. I.P.C. and sentenced them to S.I. for 2 months each. On appeal the learned Sessions Judge affirmed the conviction and sentences, but the learned Sessions Judge released the accused Azimuddin, Shamsul and Majla under the Probation of Offenders Act. Being aggrieved by the conviction and sentence, the accused Hadis filed this revision petition.

3. During the pendency of this petition, the accused petitioner Hadis died on 30 January 1985 i.e. about 2 1/2 years ago. No one of his near relatives has been substituted for the deceased till date. The question then is, - Can this revision petition be entertained after the death of the accused Section 394Cr.P.C. provides abatement of appeals on the death of the accused. But the Code has not

provided abatement of revision petitions in case of the death of the accused. A reading of Section 401, Cr.P.C. shows that it does not create any right in favour of the litigant and that no person has any right to be heard, but no order u/s 401, Cr.P.C. shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by his pleader in his own defence. In the absence of the statutory provision and in view of the provisions of Section 401, in my judgment, provisions of abatement of appeals shall not apply to the revision petitions, and revision petitions shall not abate on the death of the accused. Therefore, the High Court has to exercise its revisional jurisdiction vested in it, and the High Court is not bound in a revision petition to order substitution in every case. If the petition has been entertained, it is to be disposed of whether the accused or the petitioner is alive or dead. However, no order shall be made to the prejudice of the accused or other person unless he had been given an opportunity of being heard, as already stated. "

4. Now, in the present case, the principal question which arises for consideration is what offence the deceased accused Hadis committed, during his lifetime. Section 319, I.P.C. defines the term hurt. u/s 319, I.P.C., whoever causes bodily pain, disease or infirmity to any person is said to cause hurt Any hurt falling under any of the clauses u/s 320, I.P.C. is grievous hurt. A person therefore, cannot be said that he has caused grievous hurt unless the hurt caused is one of the kinds of hurt specified u/s 320, I.P.C. Therefore, it is the duty of the Court to give a finding on its own whether the hurt was simple or grievous. The Court is not concerned with the classification made by a doctor as to whether the hurt was simple or grievous. A doctor is to describe the facts in respect of the nature of injury and the Court is to decide whether the nature of the injury described by the doctor comes within any of the clauses of Section 320, I.P.C.

5. The Courts below have not given findings of their own as to whether the hurt was simple or grievous. The Courts below have relied on the opinion of the doctor (PW 6) that the injuries Nos. 1 and 2 were grievous. Therefore, the Courts below have erred in law for not giving findings of their own. I have also perused the evidence of the doctor (PW 6) for my satisfaction. P.W. 6 has however, stated that the injuries Nos. 1 and 2 were grievous and were caused by a blunt weapon. Materials, which would indicate that the hurt was one of the kinds enumerated in Section 320, I.P.C., are lacking in the evidence of the doctor. In such a situation, the deceased accused Hadis and his son Arju alias Azimuddin would be guilty of committing an offence u/s 323, I.P.C. and having regard to the circumstances of the case, a sentence of imprisonment for 3 months would meet the ends of justice.

6. The next question which arises for consideration is whether the non-petitioning accused Arju alias Azimuddin will be entitled to the benefit of the above conclusion. I have already observed that no right is created in favour of a litigant u/s 401, Cr. P.C. In my considered opinion, the High Court, suo motu, in the exercise of its revisional jurisdiction can set aside the conviction of the non-

petitioning accused for the ends of justice.

7. For the reasons stated above, the conviction u/s 325, I.P.C. is converted to one u/s 323, I.P.C. followed by sentence of R.I. for 3 months each by setting aside the conviction and the sentences u/s 325, I.P.C. It will be deemed that accused Arju alias Azimuddin was released on probation of good conduct for having committed an offence u/s 323 I.P.C. As regards the accused Hadis, since the accused Hadis is dead, the sentence of imprisonment becomes unenforceable. Therefore, the sentence of imprisonment passed on the deceased accused Hadis has become infructuous. Accordingly, the petition is partly allowed to the extent indicated above.