

(2018) 02 GAU CK 0033
In the Gauhati High Court
Case No : 203 of 2008

MD. AMRUL HAQUE LASKAR & ORS.

APPELLANT

Vs

THE STATE OF ASSAM

RESPONDENT

Date of Decision : 01-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 147](#), [Section 323](#) Se

Citation : (2018) 02 GAU CK 0033

Hon'ble Judges : Hitesh Kumar Sarma

Bench : Single Bench

Advocate : M.U. Mondal, B. Sarma

Final Decision : Partly Allowed

Judgement

1. This appeal is against the judgment and order, dated 20.11.2008, passed by the learned Additional Sessions Judge (FTC), Cachar, Silchar, in

Sessions Case No. 35/2007, convicting and sentencing the accused-appellants to undergo rigorous imprisonment for 5 years each and to pay a

fine of Rs. 5,000/- each with a default clause under Section 304 Part II read with Section 149 of the IPC, rigorous imprisonment for 2 years each

and to pay a fine of Rs. 1,000/- each with a default clause and rigorous imprisonment for 1 month each, 6 month each and to pay a fine of Rs.

500/- with a default clause under Sections 148/342/323/149 of the IPC respectively. The sentences are directed to run concurrently.

2. I have heard learned Amicus Curiae Mr. M.U. Mondal for the accused-appellants and learned Additional Public Prosecutor for the state

respondent No. 1 Mr. B. Sarma.

3. The case for the prosecution is that, on 23.6.2004, at about 7:00 pm, the accused-appellants came to the house of the informant Abdul Hussain

Barbhuiya, caught hold of his brother Hassan Uddin and took him with them after assaulting and thereafter he was confined in the house of the

accused-appellant Amrul Hoque and there also he was assaulted by them. The informant's father Siraj Ali, mother Aftarun Nessa and their

younger son Monojir Ali and sister Rabia Begum went to the house of accused-appellant Amrul Hussain to rescue said Hassan Uddin, but they

could not rescue him. The accused-appellants also assaulted them with lathis, fists and blows etc. and caused injuries to their person.

4. On the basis of the FIR, on the above facts, the Udharband Police Station registered a case under Sections 147/148/149/342/323/325 of the

IPC, and after completion of the investigation, laid charge-sheet against the accused-appellants under Sections 147/148/149/302/323 of the IPC.

The injured Siraj Ali succumbed to his injuries after four days of the incident, and therefore, charge under Section 302 of the IPC was also framed.

5. After exhausting all the legal formalities, learned Additional Sessions Judge, Cachar, Silchar, framed a formal charge against the accused-

appellants under Sections 148/149/342/323/302 of the IPC to which the accused-appellants pleaded not guilty. Hence the trial commenced.

6. The prosecution examined as many as 9 (nine) witnesses who were subjected to cross-examination by the defence. The defence examined none

of its own.

7. After closure of the prosecution evidence, statement of the accused-appellants were recorded under Section 313 of the Cr.PC, and in their such

statement also they are found to have denied the allegations made against them.

8. I have scanned the evidence on record.

9. On perusal of the evidence on record, it appears that the evidence of PW1 to PW5 is the most vital in the case as they led evidence against the

accused-appellants narrating the facts as well as the sequence of events leading to the occurrence.

10. In the instant case, the deceased is Siraj Ali who was the father of the informant PW2, Hassan Uddin, was taken away by the accused-

appellants forcibly, assaulted him and was also confined in the house of the accused-appellant Amrul Hoque. The deceased, along with others,

went to rescue his son/PW2 Hassan Uddin from the residence of accused-appellant Amrul Hoque, and then he was subjected to assault, accused

Jalal Uddin kicked him and made him fall on the ground and thereafter, other accused-appellants Amrul, Tamrul and Intazul sat on the body of the

deceased Siraj Ali. The evidence of PW1, PW2, PW3 & PW4 makes it clearly appear that it was all these accused-appellants who had taken the

deceased out of his house forcibly. The fact that Hassan Uddin was forcibly taken away out of his house and confined in the house of accused-

appellant Amrul Hoque, remain undisputed during the cross-examination of the said witnesses.

11. The learned Amicus Curiae has pointed out to the contradictions of the evidence of PW1 to PW4 saying that when some of the witnesses

deposed that the deceased was assaulted with lathi, some said that he was inflicted with fists and blows. There is no dispute appearing from the

evidence on record, even from the cross-examination of the witnesses by the defence, that at the time of occurrence, the accused-appellants were

in a group, and therefore, variation in the statements of the witnesses depend upon their observation, and, observation of one person from the other

on a particular facts may be different. It is an experienced fact that on a similar situation, there may be divergent observation, and therefore, the

argument made by the learned Amicus Curiae that there is contradictions in the evidence of the aforesaid witnesses appears to this court to be not

contradiction and rather discrepancies which do not touch the root of the case. The learned trial court has convicted the accused-appellants under

Section 148 of the IPC for offence. Records shows that the accused-appellants were not armed with deadly weapon as envisaged under Section

148 of the IPC, and therefore, apparently the offence under Section 148 of the IPC was not committed by the accused-appellants.

12. So far the accusation under Section 323 of the IPC is concerned, there is mutual fight between the parties, and therefore, in the considered

view of this court, offence under Section 323 of the IPC was also not committed by the accused-appellants. The accusedappellants had taken the

PW2 Hassan Uddin forcibly to their house, confined there and when the deceased and the informant went to recover him from the house of

accused-appellant Amrul are the facts not discredited during the cross-examination of the prosecution witnesses, and therefore, an offence under

Section 342 of the IPC is established by the prosecution.

13. The evidence on record reveals that the accused-appellants were the members of the same group engaged in assaulting the deceased as well

as the PW2 and PW6. The fact that they had taken the PW2 Hassan Uddin forcibly to their house, confined in the house of accused-appellant

Amrul Hoque, and thereafter, assaulted the accused-appellant resulting ultimately in the death of the deceased/father of the informant which

cumulatively makes it appear that they had committed such offence with a common object, and therefore, the accusation under Section 149 of the

IPC is found proved against the accused-appellants.

14. So far the offence under Section 304 Part II of the IPC is concerned, the evidence on record makes it appear that immediately after the

injuries were inflicted upon the deceased, he was hospitalized and after four days he succumbed to his injuries. The fact that the deceased was not

inflicted injuries with any arms and rather he was only kicked and given fists and blows conveys that it was not the intention of the accused-

appellants to cause death of the deceased, and therefore, the conviction of the accused-appellants under Section 304 Part II of the IPC appears to

be based on evidence on record requiring no interference by this court.

15. In view of the above, this court has found that the decision of the learned trial court convicting the accused-appellants under Sections 342/304

Part II and Section 149 of the IPC is based on evidence on record and the order recording conviction under Section 148/323 of the IPC does not

appear to have been based on evidence on record requiring interference by this court.

16. Accordingly, the conviction recorded by the learned trial court in respect of the accused-appellants under Sections 342/304 Part II read with

Section 149 of the IPC is affirmed and the conviction of the accused-appellants under Sections 148/323 of the IPC is set aside.

17. So far the punishment of the accused-appellants is concerned, they are sentenced to rigorous imprisonment for 5 years each for commission of

offence under Section 304 part II of the IPC. In the facts of the case, this court is of the view that, if the substantive sentence of rigorous

imprisonment for 5 years each is reduced to rigorous imprisonment for 3 years each for commission of offence under Section 304 Part II/149 of

the IPC, will meet the ends of justice, and accordingly, the punishment in respect of offence under Section 304 part II/149 of the IPC is modified.

18. So far the offence under Sections 342/149 of the IPC is concerned, the accusedappellants were sentenced to rigorous imprisonment for 6

months each and to pay a fine of Rs. 500/- each with a default clause. The punishment under Sections 342/149 of the IPC appears to this court to

be reasonable requiring no interference. However, both the sentences will run concurrently.

19. With the modification of the judgment, as above, the appeal is partly allowed.

20. Send down the LCR along with a copy of this judgment.