

(2012) 02 GAU CK 0133

In the Gauhati High Court

Case No : Criminal Rev. Petition No. 837 of 2003

Md. Rahimuddin Ahmed and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 319, 321, 323, 34, 427

Citation : (2012) 2 GLD 623

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : P. Sarma, for the Appellant; B.B. Gogoi, for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J.—This criminal revision petition has been filed against the judgment and order dated 15-07-2003 passed by the learned Sessions Judge, Bongaigaon in Criminal Appeal No. 10(3)/2002 affirming the conviction and sentence imposed by the learned Judicial Magistrate, 1st Class, North Salmara, Abhayapuri on the petitioners vide the judgment and order dated 25-07-2002 passed in C.R. Case No. 22/1999. The brief, facts of the case is that one Paziruddin, an inhabitant of the village Raghunandanpur under Abhayapuri Police Station had filed a complaint on 15-02-1999 in the Court of the learned Sub-Divisional Judicial Magistrate, Abhayapuri alleging that on 14-02-1999, the petitioners, who were arrayed as the accused in the said complaint, broke the boundary fencing of his land. When he protested, all the accused persons trespassed into his compound and assaulted him. One of the accused, namely, Khairuddin" Ahmed throttled the complainant for which he raised a hue and cry. On hearing the same, neighbours came to his rescue and the accused persons thereafter left the place. While leaving, the accused persons damaged some betelnut and other plants in his compound, causing loss of about Rs. 1,000/- to the complainant.

2. The complaint petition was transferred to the Court of the learned judicial Magistrate, 1st Class, who took cognizance against the accused petitioners for offences under Sections 447/323/427/34, IPC.

3. In the course of the trial, the complainant examined 4 witnesses, who were cross examined by the 3 defence. Thereafter, the accused persons were examined u/s 313, Cr PC.

4. On perusal of the evidence adduced and after hearing both the parties, the learned trial Magistrate took the view that the prosecution was able to establish its case beyond all reasonable doubt u/s 447/323/34, IPC and accordingly, convicted the three accused persons under the aforesaid sections. The learned Magistrate sentenced the accused persons by imposing a fine of Rs. 350/- on each of them for the offence committed u/s 323, IPC and Rs. 150/- on each of them for the offence committed u/s 447 IPC, in default of payment of the fine imposed, to undergo simple imprisonment for a period of 3 months.

5. Aggrieved by the said conviction and sentence, the petitioners preferred an appeal in the Court of the learned Sessions Judge, Bongaigaon, which was registered as Criminal Appeal No. 10(3)/2002. By the judgment and order dated 15-07-2003, the learned lower appellate Court affirmed the conviction and sentence imposed by the learned trial Magistrate and dismissed the appeal.

6. Against this, the three petitioners are before this Court in revision.

7. Heard Mr. P. Sarma, Learned Counsel for the petitioners and Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam. Also perused the lower Court record.

8. u/s 323 IPC, any person who voluntarily causes hurt, except on grave and sudden provocation, shall be punished with imprisonment of either description for a term which may extend to one year or with fine which may extend to Rs. 1000/- or with both. Hurt is defined in Section 319 IPC which says that whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. As per Section 321 IPC, whoever does any act with the intention of thereby causing hurt to any person or with the knowledge that he is likely thereby to cause hurt to any person and does thereby cause hurt to any person is said to voluntarily cause hurt.

9. From a careful reading of the aforesaid provisions, it becomes clear that/to constitute an offence of voluntarily causing hurt punishable u/s 323 IPC, the act attributed to the accused must cause hurt to the victim as defined in Section 319 IPC.

10. In so far Section 447 IPC is concerned, it prescribes punishment for criminal trespass. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both. Criminal trespass is defined in Section 441, IPC. It says that whoever enters into or upon property in the possession of another with intent to commit an offence or to

intimidate, insult or annoy any person in possession of such property or having lawfully entered into or upon such property, unlawfully remains there with intent to intimidate, insult or annoy any such person or with intent to commit an offence, is said to commit criminal trespass.

11. From the evidence on record, it appears that the complainant and the accused persons are neighbours, the accused persons being brothers. There is a bamboo fencing separating the land of the complainant from the land of the accused persons. There is a well inside the compound of the complainant. On the date and time of the occurrence, the complainant was washing his hands and feet near the well when he saw the accused persons removing the bamboo fencing. When the complainant objected to this, one of the accused persons viz., Khairuddin came inside the compound of the complainant followed by the other two accused persons. Khairuddin caught hold of the neck of complainant. When the complainant raised a hue and cry, PW 2 and PW 3, who were on the nearby road, came to his rescue. At that point of time, PW 4 also appeared. Seeing them, the accused persons left the place. But while leaving, they damaged 4 numbers of betelnut plants and other plants.

12. The complainant examined himself as PW 1. His evidence was supported by the evidence of the other witnesses.

13. On a careful scrutiny of the evidence on record, I find that the offence of criminal trespass is established against the accused petitioners. But in so far the offence u/s 323 IPC is concerned, there is no medical evidence or report to prove that the accused persons had actually caused hurt to the complainant. He was also not medically examined. Though the deposition of the complainant that accused Khairuddin had caught hold of his neck was supported by the PW 2, in cross-examination, he stated that he did not suffer any injury because of the same.

14. There is no reliable and clinching evidence to prove beyond all reasonable doubt that the accused persons had voluntarily caused hurt to the complainant within the meaning of Section 321, IPC.

15. In view of the above, I am of the view that the (conviction of the accused petitioners u/s 323 IPC is not justified Accordingly, the conviction of the accused petitioners u/s 323 IPC and the sentence of fine of Rs. 350/ imposed on each of the accused petitioners for the said conviction is set- aside. However, the conviction u/s 447 IPC and the sentence of fine of Rs. 150/imposed on each of the accused petitioners on account of the said conviction, in default to undergo simple imprisonment of 3 months, is hereby upheld.

16. Criminal Revision Petition No. 837/2003 is allowed to the extent indicated above. The accused petitioners are directed to pay the amount of fine indicated above before the learned trial Magistrate within six weeks from today. Registry to send down the lower Court record forthwith.