
(2012) 07 GAU CK 0033

In the Gauhati High Court

Case No : Criminal Revision Petition No. 112 of 2004

Md. Samsul Haque

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 482
Penal Code, 1860 (IPC) — Section 323, 341, 379, 428

Citation : (2012) 07 GAU CK 0033

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : M.U. Mahmud, Mr. P.K. Talukdar, Mr. D. Saharia, Mr. K.R. Patgiri and Mr. I. Choudhury, for the Appellant; K.A. Mazumdar, Addl. P.P., for the Respondent

Judgement

I.A. Ansari

1. By judgment and order, dated 17-03-2001, passed, in GR Case No. 725 of 1998, by the learned Sub-Divisional Judicial Magistrate (S), Goalpara, the accused-petitioner was convicted under Sections 341, 323 and 379 IPC and sentenced to suffer rigorous imprisonment for a period of six months on each count with further direction that the sentences, so passed, shall run concurrently. Aggrieved by his conviction and the sentences passed against him, the accused-petitioner preferred an appeal. By judgment and order, dated 13-02-2004, passed, in Criminal Appeal No. 6 of 2001, by the learned Sessions Judge, Goalpara, while the conviction of the accused-petitioner under Sections 341 and 379 IPC was set aside and the accused-petitioner was acquitted of the charges framed against him under the said penal provisions of law, his conviction, u/s 323 IPC was upheld with the consequential sentence passed against him by the learned trial Court directing him to suffer rigorous imprisonment for a period of six months, notwithstanding the fact that the accused-petitioner's appeal was, thus, allowed in part. The accused-petitioner, still feeling aggrieved, has impugned, in this revision, his conviction and sentence passed by the learned

appellate Court. The case of the prosecution, as unfolded at the trial, may, in brief, be described thus: On 11-10-199, when PW2 was returning home, on his bicycle, from market after selling Bidi, which PW2 had carried to the market, the accused-petitioner sat on the carrier of the said bicycle. While PW2 was so proceeding towards his house, the accused-petitioner caught hold of the neck of PW2 and pushed him down to the ground. The accused-petitioner, then, sat on the chest of PW2 and gave him several blows and also throttled him until the time PW2 fell unconscious. When PW2 regained his senses, he found himself lying in a jungle and the sum of Rs. 4255/-, which he was carrying with him and also his wrist watch, had disappeared. PW2 restarted his journey to his house on foot. Witnessing PW2 staggering, while walking towards his house, PW3 took PW2 to the house of PW2. On arriving at his house, PW2 narrated the occurrence, as regards what the accused-petitioner had done to him(PW2), to his(PW2's) father (PW1) and also PW3, whereupon PW1 lodged a written Ejahar at Lakhipur Police Station. Treating the said Ejahar as First Information Report, a case was registered against the accused-petitioner under Sections 341/323/379 IPC and, on completion of investigation, police submitted charge-sheet against the accused-petitioner.

2. During trial, when the charges under Sections 341, 323 and 379 IPC were framed against the accused-petitioner, he pleaded not guilty thereto.

3. In support of their case, prosecution examined altogether 8 (eight) witnesses including the medical officer, who had examined and treated PW2. The accused-petitioner was, then, examined u/s 313 Cr.P.C. and, in his examined aforementioned, the accused-petitioner denied that he had committed the offences, which he was alleged to have been committed, the case of the defence being that the accused-petitioner was completely innocent and that he had been falsely implicated by PW1 and PW2 due to claim of money, which the accused-petitioner had raised, because of the fact that PW2 was liable to pay the amount, which the accused-petitioner had claimed.

4. The learned trial Court, having found the accused-petitioner guilty of the offences charged with, convicted him accordingly and passed sentences against him as mentioned above. Aggrieved by his conviction and the sentences passed against him, the accused-petitioner preferred an appeal, which, as indicated above, was partly allowed in the sense that the learned appellate Court, while acquitting the accused of the charges framed against him under Sections 341 and 379 IPC, maintained his conviction u/s 323 IPC and also the sentence, passed against him by the learned trial Court, to the effect that the accused-petitioner shall suffer rigorous imprisonment for a period of six months. As the appeal has not yielded and the desired result, the accused-petitioner is, now, before this Court with this revision.

5. Heard Mr. MU Mahmud, learned counsel for the accused-petitioner, and Mr. KA Mazumdar, learned Additional Public Prosecutor, Assam.

6. While considering the present revision, made u/s 482 Cr.P.C., it needs to be noted that PW2 is the victim and lone witness to the alleged occurrence of assault on him by the accused-petitioner inasmuch as the accused-petitioner already stands acquitted of the charges, which had been framed against him under Sections 341 and 379 IPC, and no revision/appeal has been filed by the State or informant as against the acquittal, which the learned appellate Court, as mentioned above, has recorded.

7. The limited question, therefore, which falls for decision, in this revision, is: Whether the accused-petitioner had voluntarily caused simple hurt as alleged by PW2?

8. Bearing in mind what is indicated above, when I turn to the evidence of PW2, I notice that he has deposed that on 11-10-1998, he had gone to the market to sell Bidi and at about 2/2.30 pm, when he was returning home with the accused sitting on the carrier of his bicycle, the tire of his cycle got punctured whereupon he got the tire repaired and restarted his journey towards his home, but this time, it was the accused-petitioner, who was cycling and PW2 was sitting on the carrier of the said bicycle. After some time, the accused-petitioner told PW2 that an insect had entered into his eye and he was finding it difficult to take the cycle to the house of PW2 and the accused-petitioner, therefore, requested PW2 to allow him (accused-petitioner) to sit on the carrier of his bicycle, whereupon the accused-petitioner sat on the carrier of the bicycle, while PW2 started cycling home, but after covering a distance of about half- a-kilometer, the accused-petitioner caught hold of the neck of PW2, pushed him to the ground, sat on his chest and started giving him blows. It is in the evidence of PW2 that the accused-petitioner started throttling the neck of PW2 and he(PW2) lost his senses and when he regained his senses, he found himself lying in a jungle and a sum of Rs. 4255/-, which he was carrying in his pocket along with the HMT wrist watch, which he was wearing, had disappeared and that even the bicycle was not available at the place of occurrence. It is also in the evidence of PW2 that he came to the road and started, somehow, walking towards his house and, at that point of time, PW3 happened to pass through and, on being reported by him (PW2) to PW3, PW3 took him (PW2) to his (PW2's) house and, on arriving there, he (PW2) informed his father (PW1) and PW3 about the occurrence. PW2 has also deposed that his father (PW1) lodged an Ejahar and he (PW2) was treated by a doctor in the hospital and that during the course of investigation, his bicycle was seized by the police.

9. The fact that the bicycle was seized by the police was not disputed during the cross-examination of PW2. This apart, while PW2 was put to cross-examination at length, nothing significant could be elicited by the defence to show that what he had deposed was untrue or false, particularly, as far as his evidence with regard to assault on him by accused-petitioner was concerned. Thus, the evidence of PW2 remained unshaken in so far as his evidence with regard to assault on him by the accused-petitioner was concerned.

10. PW3, it may be noted, fully corroborated the evidence of PW2 inasmuch as the evidence of PW3 is that while he was returning home at about 9 pm, he found PW2 walking towards his house, but (PW2) was staggering and, on making inquiry from him (PW2), PW2 told him (PW3) that one person had assaulted him, throttled him and had taken away his bicycle, whereupon he (PW3) carried PW2 to the house of PW3 and, on the following day, a bicycle was recovered from near a Kali temple and the said bicycle was found to be of PW2. Even the evidence of PW3 remained wholly unshaken in cross-examination in fact, the defence did not cross-examine PW3 effectively except offering some suggestions, which were denied by PW3.

11. The evidence given by PW2 and PW3 were wholly corroborated by PW1 (father of PW2), who was as mentioned above reported, about the occurrence by PW2.

12. In the circumstances indicated above, the finding of guilt, which had been reached by the learned trial Court and upheld by the learned appellate Court by this effect that the PW2 had been assaulted by the accused-petitioner and suffered simple hurt, cannot be assailed and, in fact, could not be assailed.

13. As far as PW4 and PW5 are concerned, they had given evidence to the effect that the accused had made a confession admitting what PW2 had alleged, but this part of the evidence of extra-judicial confession, as rightly contended by Mr. Mahmud, learned counsel for the accused-petitioner, cannot be confidently relied upon inasmuch as the accused was, admittedly, found by PW4 and PW5 to have been tied to a tree at the time, when he had made the said extra-judicial confession. In such a situation, the evidence, of extra-judicial confession, cannot be treated to be voluntary and since the evidence, with regard to the extra judicial confession, cannot be held to be voluntary, no importance can be attributed to the evidence of the alleged extra-judicial confession made by the accused-petitioner.

14. Notwithstanding, however, the fact that the evidence, as regards the extra-judicial confession, cannot be relied upon by this Court, the fact remains that the evidence of PW2 has not only remained unshaken, but his evidence has received credible corroboration from the evidence of PW1 and PW3 so far as assault on PW2 by the accused-petitioner is concerned.

15. Situated thus, this Court does not find that the finding of guilt, reached against the accused-petitioner, u/s 323 IPC, suffers from any infirmity, legal or factual, and/or calls for interference by this Court.

16. Coming to the sentence, which has been passed against the accused-petitioner, it may be noted that the occurrence, in the case at hand, took place in the year 1998, i.e., about 14 days back. This apart, the evidence on record does not reveal any serious injury; rather, the injury is simple in nature caused to PW2. In the circumstances, this Court is of the view that the accused-petitioner ought not to be, now, allowed to suffer rigorous imprisonment for a period as

long as six months, in the considered view of this Court, rigorous imprisonment for a period of one month would, in the facts and circumstances of the present case, satisfy the ends of justice.

17. In the result and for the reasons discussed above, this revision partly succeeds. While the conviction of the accused-petitioner, u/s 323 IPC, is hereby upheld, his sentence is reduced to a period of 1 (one) month of rigorous of imprisonment with fine of Rs. 500/- and, in default, he shall suffer simple imprisonment for a period of 15 days subject to set off as permissible in law, in terms of Section 428 Cr.P.C., for the period, which the accused-petitioner has already undergone.

18. With the above observations and directions, this revision petition shall stand disposed of. Send back the LCR.