

(2018) 02 GAU CK 0022
In the Gauhati High Court
Case No : 441 of 2009

Md. Suag Miah alias Suaibur Rahman & Anr.	APPELLANT
Vs	
The State of Assam	RESPONDENT

Date of Decision : 01-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 397](#), [Section 401](#), [Section 313](#)
a> - Calling for records to exercise powers of revision - High Courts powers of revision
- Power to ex

Citation : (2018) 02 GAU CK 0022

Hon'ble Judges : Hitesh Kumar Sarma

Bench : Single Bench

Advocate : SC Biswas, R Begum, S Das, B Choudhury, SU Ahmed, T Saikia, G Singh, PS Lahkar

Final Decision : Disposed

Judgement

1. This criminal revision petition has been filed, under Section 397, read with Section 401 of the Cr.P.C., against the judgment and order, dated 26-12-2008, passed by the learned Chief Judicial Magistrate, Karimganj, in GR Case No. 834/2005, convicting and sentencing the revision petitioners to suffer rigorous imprisonment for 3 months and to pay a fine of Rs. 500/-, in default, to suffer simple imprisonment for another 15 days, under Section 447 of the IPC, and also to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.1000/-, in default, to suffer simple imprisonment for 2 months as well as the judgment and order, dated 23-11-2009, passed by learned Sessions Judge, Karimganj, in Criminal Appeal No. 5(1)/2009, modifying and reducing the sentences to simple imprisonment for 3 months and 2 months respectively under

Sections 447 and 323 of the IPC and to pay fine of Rs. 1000/-, under Section 323 of the IPC.

2. I have perused the petition including the annexures furnished therewith along with the impugned judgments.

3. I have heard Mr. SC Biswas, learned counsel representing the petitioners and Mr. PS Lahkar, learned Additional Public Prosecutor, Assam.

4. The fact of the case is that, on 27-09-2005, at about 2.00 p.m., with regard to some family matters, there was a discussion going on amongst

the members of the family of the informant, Md. Liakat Ali. At that time, the accused persons trespassed into the residential compound of the

informant and had altercation with Fuljan Bibi, sister of the informant and when she shouted, the other two sisters of the informant, Nekjan Bibi and

Roboi Bibi went to save her, but the accused-revision petitioners assaulted Fuljan Bibi on her person and snatched her gold chain. When the

informant arrived at the place of occurrence, he was also assaulted by the accused-revision petitioners.

5. On receipt of the FIR, on the above facts, the Karimganj Police Station registered a case, being Karimganj Police Station Case No. 384/2005,

under Sections 447/379/323/324/34 of the IPC, investigated into it, and finally, laid charge sheet against the accused-revision petitioners, under

Sections 447/323/34 of the IPC. After exhausting all required legal formalities, charge under Sections 447/323/34 of the IPC was framed to which

the accusedrevision petitioners pleaded not guilty.

6. Then the trial commenced before the learned Chief Judicial Magistrate, Karimganj.

7. The prosecution examined as many as 5 (five) witnesses and the defence examined 1 (one). After closure of the prosecution evidence,

statements of the accused-revision petitioners were recorded under Section 313 of the Cr.P.C. and in their such statements, they are heard

denying accusations made against them.

8. I have scanned the evidence led by both the parties as available on record of the learned trial Court. The informant is examined as PW1, who

himself is also an injured in the occurrence alleged in the instant case. His evidence is to the effect that while he was holding discussions with his

family members, the accused-revision petitioners trespassed into his house, had

some altercation followed by assault on the person of Fuljan Bibi

and thereafter when other two sisters, Nekjan and Robjan Begum appeared in the scene of occurrence, they were also assaulted by the accused-

revision petitioners. The evidence of PW1 makes it appear that the place of occurrence is the campus of their residence, meaning thereby, that the

accused came to their place, which constituted the offence of trespass as defined in Section 441 of the IPC. Such evidence of PW2, who is the

brother of the informant/PW1, and a natural witness to the occurrence as the occurrence took place in their residential campus itself.

9. PW2, Mustt. Robjan Begum, is the witness to the occurrence. She has seen the accused-revision petitioners assaulting the injured. Fuljan Bibi

as well as the informant (PW1).

10. PW3, Fuljan Bibi is the injured, who is the first victim of assault of the accused revision petitioners. The informant and his other sisters sustained

injuries only when they resisted the accused-revision petitioners from assaulting PW3.

11. I have thoroughly gone through the evidence of these three witnesses and their cross-examination. The defence tried to discredit their evidence

suggesting that there is previous enmity between them; therefore, the prosecution has staged a make-belief story to pay off their old score.

12. PW4 is the doctor who examined the injured and found that the injuries were simple and opined to have been caused by blunt weapon,

thereby bringing the offence of assault causing hurt to PW3 under Section 323 of the IPC.

13. The evidence of PW5 is of routine nature, being the Investigating Police Officer, from receipt of the FIR till completion of investigation and

laying of the charge-sheet.

14. The learned trial Court as well as the learned appellate Court respectively convicted and upheld the conviction of the accused-revision

petitioners under Sections 447 and 323 of the IPC.

15. As discussed above, the evidence on record, particularly, the evidence of PW1, PW2, PW3 and PW4 have established the guilt of the

accused-revision petitioners under the aforesaid two provisions of the Penal Code and holding them guilty by the learned trial Court as well as by

learned appellate Court appears to have been based on the evidence on record

requiring no interference. So far as the sentence is concerned, the learned appellate Court modified the sentence reducing the same to simple imprisonment for 3 months under Section 323 of the IPC with fine of

Rs.1,000/- with default clause and also reducing the sentence to simple imprisonment for 3 months without fine, under Section 447 of the IPC.

16. Considering the facts and circumstances of the case as well as the fact that the accused-revision petitioners have been fighting a prolonged legal

battle since 2005, in the considered view of this Court, instead of substantive sentence, if the sentence in the form of fine is imposed that will meet

the ends of justice. Therefore, the sentence of fine, imposed upon by the learned trial Court as well as the learned appellate Court of Rs. 1000/-

under Section 323 of the IPC and Rs.500/-, under Section 447 of the IPC is retained. Accordingly, the accused-revision petitioners are sentenced

to fine only as aforesaid and in default of payment of fine, they will undergo simple imprisonment for 15 days on each count. The substantive

sentence of imprisonment imposed upon both the accused-revision petitioners is set aside.

17. The accused-revision petitioners are directed to surrender before the learned trial Court to serve out the sentence.

18. This criminal revision petition is disposed of accordingly.

19. Send down the LCR along with a copy of this order.