

(2010) 09 GAU CK 0069

In the Gauhati High Court

Case No : Criminal Rev. Petition No. 102 of 2006

Mohan Miah and Others

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 10-09-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 138, 148, 149, 161, 307

Citation : (2010) 4 GLT 609

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Advocate : S. Das and K.K. Pal, for the Appellant; A. Ghosh, for the Respondent

Judgement

U.B. Saha, J.—The Petitioners, eight in number, namely, 1. Sri Mohan Miah, 2. Sri Khokan Miah, 3. Shri Salim Miah, 4. Sri Abu Kwcher, 5. Sri Jashim Miah, 6. Sri Abul Kalam, 7. Sri Abdul Mannan and 8. Abdul Karim (hereinafter referred to as "A1" to "A8" respectively) filed the instant criminal revision petition as they being added as accused in the charge sheet filed by the investigating authority in Sonamura P.S. Case No. 34/2002 under Sections 148/149/448/326 IPC, faced trial before the learned Judicial Magistrate, First Class, Sonamura in Case No. GR 79/2002 wherein the learned Judicial Magistrate convicted Khokan Miah u/s 148 and sentenced him to suffer RI for two years and to pay a fine of Rs. 1,000/-, i.d. to payment of fine to suffer further imprisonment for one month. He was further convicted u/s 324 read with Section 149 IPC and sentenced to SI for six months as well as convicted u/s 324 IPC read with Section 149 and sentenced to suffer RI for two years under the said sections and also to pay a fine of Rs. 500/-, i.d. to payment of fine money to suffer further imprisonment for a period of one month. Salim Miah was convicted u/s 148 IPC and sentenced to suffer RI for two years and to pay a fine of Rs. 1000/-, i.d. to payment of fine to undergo suffer imprisonment for one month. He was also convicted u/s 448 IPC and sentenced to suffer SI for six months. He was further convicted u/s 324 IPC read with Section 149 IPC and was sentenced to suffer RI for two years and to pay a fine

of Rs. 500/-, i.d. to payment of fine, to suffer further imprisonment for one month. All the sentence of Khokan Miah and Salim Miah were ordered to run one after Anr. . Convict Mohan Miah was convicted u/s 148 IPC and sentenced to suffer two years RI and he was further convicted u/s 448 IPC and sentenced to suffer imprisonment for six months. He was also convicted u/s 324 read with Section 149 IPC and sentenced to suffer RI for two years and all his sentences were to run one after Anr. . Convict Abdul Mannan @ Mona Miah was convicted u/s 148 IPC and was sentenced to suffer RI for two years and to pay a fine of Rs. 1,000/- and i.d. to payment of fine to suffer imprisonment for one month. He was further convicted to undergo SI for six months u/s 448 IPC and to suffer two years RI u/s 324 read with Section 149 IPC and each of the sentences were to run one after Anr. . Convict Abul Kalam was sentenced to pay fine money of Rs. 5,000/- u/s 148 IPC and i.d. to payment of fine to suffer SI for six months and to pay a fine of Rs. 1,000/- u/s 448 IPC and i.d. to payment of fine shall suffer SI for two months. He was further sentenced to pay fine money of Rs. 4,000/- u/s 324 read with Section 149 IPC and i.d. to payment of fine to suffer SI for eight months. Convict Abdul Karim was convicted u/s 148 IPC and sentenced to suffer RI for two years and to pay fine of Rs. 5,000/- i.d. to payment of fine to suffer SI for six months. He was also sentenced to suffer SI for six months u/s 448 of IPC and RI for two years u/s 324 of IPC, read with Section 149 of IPC and to pay a fine of Rs. 4,000/-, i.d. to payment of fine to suffer further SI for eight months and all the sentences were to run concurrently. Convicts Jashim Miah and Abu Kauchar were sentenced to suffer RI for one year u/s 148 IPC and to pay fine of Rs. 1,000/- each, i.d. to payment of fine to suffer further imprisonment for six months each. Both the convicts were sentenced to suffer SI for six months u/s 448 IPC and also to suffer RI for two years u/s 324 IPC read with Section 149 IPC and the sentences were to run one after Anr. . The said conviction was upheld by the learned Addl. Sessions Judge, Sonamura in Crl. Appeal No. 5(1)/2006 with some modification of the sentences, inter alia, that the substantive sentences of imprisonment inflicted upon the convict Appellants i.e. A1 to A8 herein would run concurrently and the sentences in regard to payment of fine and compensation to the victim remained unchanged.

2. Being aggrieved by the aforesaid judgment of the Appellate Court the Petitioners, A1 to A8, filed the present revision petition.

3. Heard Mr. S. Das, learned senior Counsel assisted by Mr. K.K. Pal, learned Counsel for the accused Petitioners as well as Mr. A. Ghosh, learned Addl. PP for the State Respondents.

4. The case of the prosecution, in brief, is that on 06.05.2002 one Sri Khitish Debnath lodged an Ejahar before the Sonamura PS alleging that the accused persons namely Mohan Miah, Khokan Miah, Salim Miah, Washim Miah, Abu Kauchar, Jashim Miah, Abul Kalam, Abdul Mannan and Abdul Karim were member of an unlawful assembly and in prosecution of the common object of such assembly committed the offence of rioting with deadly weapon on 06.05.2002 at

09.00 a.m. at Rabindranagar area under Sonamura PS. It has also been alleged in the FIR that the accused persons being members of an unlawful assembly caused grievous hurt to one Khitish Debnath and Kabil Miah and also committed mischief by causing wrongful loss and damage to the property of Nani Pal. Upon investigation, the investigating authority led charge sheet under Sections 148/448/326 as well as Section 427 IPC read with Section 149 IPC. As the accused persons pleaded not guilty and claimed to be tried the learned Trial Court took up the trial and during the course of trial accused Washim Miah jumped bail and vide order dated 06.07.2005, the Trial Court adjourned the case sine-die against the accused Washim Miah and proceeded with the trial against the remaining eight accused persons.

5. In the course of trial the prosecution, to prove its case, examined as many as eighteen witnesses, namely, Michil Miah (P.W. 1), Ranjit Debnath (P.W. 2), Reju Miah (P.W. 3), Jagabandhu Debnath (P.W. 4), Mustafa Kamal (P.W. 5), Khitish Debnath, informant (P.W. 6), Dr. Arunava Sinha (P.W. 7), Kabil Miah-victim (P.W. 8), Safique Miah (P.W. 9), Tapan Saha (P.W. 10), Idrish Miah (P.W. 11), Dr. Ratan Chakraborty (P.W. 12), Abdul Aziz (P.W. 13), Dr. Sapan Kr. Das (P.W. 14), Dr. Partha Sarathi Pal (P.W. 15), Ganesh Ch. Deb (P.W. 16), Biswanath Deb (P.W. 17) and Dr. Sarajit Debbarma (P.W. 18) and also exhibited some documents including the injury report of Abdul Adz, Kabil Miah and Khitish Debnath which were marked as Exhibits 5, 6 and 7 respectively.

6. On examination of the prosecution witnesses and on completion of trial the accused Petitioners were convicted and sentenced as stated supra by the learned trial Judge vide his judgment and order dated 08.02.2006 against which they preferred appeal and in the said appeal the learned Appellate Court maintained the judgment of conviction and modified the order of sentence as referred to above. The learned Counsel for the Appellants, Petitioners herein, did not make such submission before the Appellate Court on the merit of the case rather stressed, inter alia, "if the preparation of the convicts for committing the crime was such, as made out in the prosecution case, the injuries sustained by the victims would have been much more than what was actually suffered by them" and according to him, no case is made out against the accused persons u/s 324 IPC. According to the Petitioners, the sentence imposed by the learned trial Court was disproportionate than the actual offence committed by them. Hence, this revision petition.

7. Mr. Das, learned senior Counsel has though assailed the conviction on a number of grounds, inter alia, that there were vital discrepancies in the FIR lodged by injured Khitish Debnath (P.W. 6) and in his deposition in the Court and the Appellate Court failed to properly appreciate the evidences of the prosecution witnesses. More so, the prosecution also withheld two vital witnesses namely, Nani Pal and Santi Datta whose shops were broken and where the injured took shelter and the circumstances under which the alleged incident took place and more so, there was no evidence on record that the accused persons formed

unlawful assembly which attracts the provisions of Section 149 or Section 138 of the IPC but ultimately he gave up those grounds and urged for modification of the sentences from RI to fine as there is no previous criminal record against the accused Petitioners and by this time about eight years have passed from the date of incident and both the accused persons and the injured are living in the society peacefully without any further incident and complaint.

8. In support of the aforesaid contentions, Mr. Das placed reliance upon a decision of the Apex Court in *Ashok Kumar Chaudhary and Others Vs. State of Bihar*, wherein the Apex Court while declining to interfere with the order of conviction of the Appellant A1 and A3 of that case u/s 324 IPC against the sentence to undergo RI for two months each as well as conviction of the Appellant A2 u/s 307 IPC and sentence to undergo RI for two years which was subsequently affirmed by the High Court in appeal, set aside the sentence of two months RI awarded to Appellants A1 and A3 and instead they were sentenced to pay a fine of Rs. 20,000/- each within six weeks from the date of judgment failing which they will undergo RI for a period of one month and also reduced the sentence of Appellant No. 2 Kailash Chaudhury, who was an old person of about 81 years of age and had already undergone five months RI, from three years RI to one year RI and also to pay a fine of Rs. 20,000/- within six weeks from the date of judgment and in default will undergo further RI for a period of one month and the amount of fine so recovered shall be paid in equal proportion to the persons injured in the incident.

9. He also placed reliance on a decision of this Court dated 05.09.2009 passed in Crl. A. No. 37 of 2002: *Smt. Bakul Rani Das and Ors. v. State of Tripura*, reported in 2009 (4) GLT 958: 2010 CriLJ. 158 (Gau) wherein this Court altered the conviction of the Appellants of that case from u/s 326 IPC to under Sections 324/34 IPC and modified the sentence to pay a fine of Rs. 2,000/- each considering the fact that nine years had already passed from the date of incident and the accused were living peacefully in the society without any complaint from any quarter.

10. Mr. Ghosh while supporting the judgment and order of conviction of the learned trial Court as well as the learned Appellate Court would contend that the prosecution has proved its case before the trial Court and the learned Trial Court rightly passed the order of conviction and sentence relying upon the statements of P.W. 6 and P.W. 8 as their statements have been fully corroborated by the evidence of the medical officers, i.e. P.Ws. 12, 14, 15 and 18 as well as from the injury report. However, as Mr. Das has refrained himself from challenging the order of conviction and only urged for modification of the sentences on the ground that the Petitioners, though for a short period, were in custody during trial as well as at the appellate stage, it is up to the Court whether while maintaining the conviction, the sentence of imprisonment has to be modified to only fine or not?

11. Before considering the submission of the learned Counsel for the parties it

would be proper to discuss the relevant portion of the evidence of the prosecution witnesses.

12. P.W. 1, being not the eye witness, only informed about the assault on P.W. 8 Kabil Miah and regarding his admission in the hospital and discharge, it is not necessary to discuss the evidence of this witness in detail.

13. P.W. 2, who is alleged to be an eye witness, stated in his deposition that on 06.05.2002 at 09.00 a.m. while he was in his shop at Rabindranagar Market he saw the accused persons, namely, Mohan Miah, Karim Miah, Abu Kauchar, Salim Miah, Washim Miah and Khokan Miah entering into the shop of Kabil Miah (P.W. 8), an injured with kirij and lathi and according to the said witness the miscreants started assaulting Kabil Miah and in order to save his life Kabil Miah ran away to the road and then took shelter in the shop of one Santi Datta. He also stated in his deposition that the miscreants also attacked and assaulted the informant Khitish Debnath (P.W. 6) with Kirij and Dao and even dragged him out from the shop of Nani Pal.

14. P.Ws. 4 and 5 corroborated the evidence of P.W. 2.

15. P.W. 8, victim Kabil Miah has also named nine accused persons including the accused Petitioners.

16. P.W. 6, the informant and an injured, Khitish Debnath has stated in his deposition that while he was present in his shop at about 09.00 a.m. he saw accused Khokan Miah, Mannan Miah, Mohan Miah, Abu Kauchar, Washim Miah, Jashim Miah, Karim Miah, Salim Miah and Abul Kalam entering into the shop of Kabil Miah on the opposite side of his shop.

17. P.W. 8, Kabil Miah the victim, in his deposition stated the names of all the nine accused persons and it appears from his deposition that the accused persons had actually come to teach him a lesson but assaulted Khitish Debnath (P.W. 6) when he tried to prevent them from doing so.

18. P.W. 9 and P.W. 10 have almost repeated the story as narrated by the earlier witnesses.

19. P.W. 3 and P.W. 11 are the two witnesses who have deviated from their earlier statements made before the police u/s 161 and were declared hostile by the prosecution. Though the aforesaid P Ws were declared hostile but P.W. 3, Raju Miah in his evidence stated that he saw Kabil Miah being chased by some miscreants to the shop of Santi Dutta and subsequently he heard that Kabil Miah and Khitish Debnath were hospitalized as they sustained injuries as a result of assault.

20. P.Ws. 7, 12, 14, 15 and 18 are the doctors who examined the victims Khitish Debnath and Kabil Miah on different occasions in different places.

21. As Mr. Das did not challenge the order of conviction, it is not necessary for this Court to discuss in detail the evidence of these P Ws as the question of

sentence is only before this Court for adjudication.

22. Having heard the learned Counsel for the parties and on going through the evidence on record as well as the judgment of the learned Trial Court and the Appellate Court, it appears that the accused Petitioners along with Anr. accused person, who jumped bail, physically assaulted the informant P.W. 6, Khitish Debnath, P.W. 8 Kabil Miah and P.W. 13 Abdul Aziz with the help of sharp and blunt weapons as a result of which they sustained abrasion and cut injury grievous in nature which is also corroborated by the doctors, P.Ws. 7, 12, 14, 15 and 18, who examined them from time to time. Therefore, the learned trial Court as well as the Appellate Court did not commit any error in convicting the accused persons and affirming the same as the accused Petitioners had formed an unlawful assembly armed with deadly weapons and committed trespass by entering into the shop of the victim Kabil Miah (P.W. 8) and assaulted him and the informant Khitish Debnath (P.W. 6). It also appears from the record that the learned Appellate Court while upholding the conviction modified the sentence to the extent as stated supra.

23. Now let us come to the question of sentence. In operating the sentencing system, law should adopt a corrective machinery, retribution, deterrence, reformation and protection based on factual matrix. While imposing sentence. Court should consider the facts and given circumstances of each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of the weapons used and all other attending circumstances.

24. Conviction is the proof of guilt for an offence and sentence is the mode of punishment. It is not always necessary to send a convict to jail, sometimes even sentence of fine is sufficient for the convict to understand the wrong committed by him to the society by doing the crime and for which the legislature also prescribed for certain offence sentence of imprisonment of fine or both, hi Sections 148 and 324 IPC the legislature prescribed similar punishment i.e. with imprisonment of either up to three years or with fine or both and for an offence u/s 448 of the IPC the punishment prescribed is either imprisonment for a term up to one year or with fine which may extend to rupees one thousand or with both.

25. Upon going through the aforesaid prescription of punishment, it can be easily said that in some cases the legislature quantified the amount of fine and in other cases left the quantum of fine to be decided by the Court considering the facts and circumstances of each case.

26. As the legislature has given some discretion to the Court regarding imposition of the sentence considering the facts of the case, it is necessary to consider the submission of Mr. Das regarding the modification of sentence. In the instant case, it appears from the record that the incident in which the accused Petitioners were involved took place about 8 years back and the learned

Appellate Court while fixing the quantum of sentence did not consider some factors which needed to be considered, inter alia, the conditions in which the accused were living, their cultural, social and economic conditions, temperament and some other factors. More so, all the accused, except accused No. 3, were in custody for four days and all of them are now on bail and are residing in the same village with the victims peacefully. They are all the first time offenders and they have no previous criminal record. If after eight years of the incident the accused Petitioners are sent to jail for suffering the sentence of imprisonment as awarded by the Appellate Court then instead of rectification they are likely to come in contact with hardened criminals. Therefore, it would meet justice if the order of sentence of imprisonment is modified to the extent of payment of fine.

27. Accordingly, the sentence of imprisonment awarded to the accused Petitioners is set aside and instead they are sentenced to pay a fine of Rs. 10,000/- each within two months from today failing which they will undergo RI for a period as awarded by the learned Appellate Court. In addition to the aforesaid sentence they shall be liable to pay fine money as awarded by the learned Appellate Court within the aforesaid period.

28. The amount of fine, as ordered by this Court, if deposited by the accused Petitioners then 70% of the deposited fine money shall be paid to the informant victim Khitish Debnath (P.W. 6) and the remaining 30% shall be paid to the victim Kabil Miah (P.W. 8).

29. With the above observations and directions the revision petition is partly allowed to the extent indicated above.