
(2015) 03 GAU CK 0109
In the Gauhati High Court
Case No : Criminal Appeal No. 294 of 2014

Molsem Uddin

APPELLANT

Vs

Farida Bibi and Others

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 325, 457, 498(A)

Citation : (2015) 2 GLD 267

Hon'ble Judges : Biplab Kumar Sharma, J.

Bench : Single Bench

Advocate : M.A. Sheikh, for the Appellant; K. Mazumdar, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—Heard Mr. M.A. Sheikh, learned counsel for the appellant. Also heard Mr. K. Mazumdar, learned Additional Public Prosecutor, Assam. None has appeared for the accused/respondent No. 1. By means of this appeal, the appellant seeks interference with the impugned judgment of conviction dated 30.06.2014 passed by the learned Sessions Judge, Dhubri, in Sessions Case No. 46/2012, so far as the same relates to acquittal of the accused/respondent No. 1 for the offence punishable under Section 307, IPC. The appellant is also aggrieved by the sentence awarded in respect of the conviction of the accused/respondent No. 1 for the offence punishable under Section 325, IPC. For a ready reference, the operative part of the impugned judgment is quoted below:--

"Now on a scanning of the evidences on record in the light of the aforesaid proposition of law, it is found that none of the P.Ws. including injured had recorded success to bring the ingredient No. (ii) of Section 307, as it has not been established that the accused inflicted blow on the person of CW-1 with such intention or knowledge and under such circumstances that if she by that act caused death she would be guilty of murder. Thus, it can be further conclude that

the ingredients under Section 307 have not at all been established against the accused beyond all reasonable doubts. However, it has been established that the injuries caused by the accused upon the person would come under the purview of Section 325, IPC. Thus, the accused cannot evade the liability of the Section 325, IPC. Accordingly, accused is acquitted of the offence under Section 307, IPC and convicted under Section 325, IPC."

2. As regards the punishment awarded to the accused/respondent No. 1, the learned trial Court upon conviction of the accused/respondent No. 1 has awarded the punishment of simple imprisonment of 6(six) months in consideration of the relevant materials including the fact that the accused/respondent No. 1 is the mother of four children.

3. The prosecution story in brief is that the accused/respondent No. 1, who was the wife of the victim along with others, assaulted him due to some domestic affairs. It was on 18.11.2010. As per the allegation made in the F.I.R. again on 19.11.2010, the accused/respondent No. 1 along with others, armed with lathi, dagger and rod inflicted blow on the person of the victim with the intention to kill him.

4. On the basis of the F.I.R. lodged on 20.11.2010, Dhubri police registered a case and on conclusion of the investigation, submitted charge sheet under Sections 457/325/307, IPC against the accused persons. In due course, charge was framed against the accused/respondent No. 1 only. She having denied the charge so framed and claimed to be tried, trial commenced.

5. During trial, the prosecution examined 12 witnesses. It will be pertinent to mention here that the victim was not examined as prosecution witnesses and therefore, he was examined as Court Witness (CW-1).

6. PW 1 is the informant, who in his deposition stated that the incident took place in the year 2010. He came to know that his brother i.e. the victim was assaulted by the accused/respondent No. 1 and her brother. Getting the information, he went to the house of his brother and found him in senseless condition. He sustained injuries on his forehead. He was taken to Dhubri Civil Hospital and thereafter he was taken to Guwahati for better treatment. Thereafter, he lodged the F.I.R., Ext. 1.

7. PW 2 in his deposition stated that on the day of occurrence at about 4/5 a.m., his wife told him about hearing cries from the house of the victim. He along with his wife and neighbourers went to the house of the victim and found him crying covering his face. His hand was blood stained. On being asked, he stated that it was the accused/respondent No. 1, who inflicted blow on his forehead.

8. PW 3 and PW 4 also stated in their deposition that they could see the accused in a pool of blood sustaining head injury. Later on, they came to know that it was the accused/respondent No. 1, who had inflicted blow on his head. The testimony of PW 4 when considered in reference to the testimony of the Investigating

Officer (PW 10), it is found that PW 4 did not state before the Investigating Officer during trial that prior to the date of incident, people from the house of the in laws had assaulted the victim. He also did not state during investigation that he had shown the spade in the place of occurrence.

9. PW 5 and PW 6 in their deposition stated that they could come to know that the accused/respondent No. 1 had assaulted her husband i.e. the victim. Like that of PW 4, PW 6 also did not state before the PW 10, i.e. the Investigating Officer that on the day of incident and at the relevant point of time, he was proceeding towards Dhighaltari village and the path is situated alongside the house of the victim.

10. PW 7 in his statement stated about getting the information of the victim being assaulted by the accused/respondent No. 1 with a spade.

11. PW 8 in her deposition stated that she having heard cries from her father i.e. the victim, came to his bed room and found him lying near the door step. Her father sustained injuries and blood was coming out. On being asked, her father named her mother.

12. PW 9 is the doctor, who had examined the injured and found the folio-wings:--

"1. Lacerated injury in the left forehead and cheek 6" x 1" x 1/2".

2. The patient was drowsing."

According to PW 9, the age of the injuries were less than 24 hours and caused by blunt object.

13. PW 10 is the police officer, who made the GD Entry vide No. 337 dated 20.11.2010 on the basis of the written ejahar lodged by one Samser Ali. Thereafter, the ejahar was sent to Dhubri Police Station for registration of a case. He himself took up the investigation on the basis of the aforesaid GD Entry.

14. PW 11 in his deposition stated that he was entrusted with the investigation of the case, but on perusal of the case diary he found that investigation had already been completed by the previous Investigating Officer. Therefore, he submitted the charge sheet, Ext. 6.

15. PW 12 in his deposition stated that he was working as Registrar in the Surgery Department of GMCH, who came to depose to identify the signature of one Dr. Debojit Choudhury, who had examined the victim in respect of his injuries.

16. On the basis of the aforesaid evidence on record, the learned Trial Court has convicted the accused/respondent No. 1 under Section 325, IPC with the sentence of simple imprisonment for 6(six) months and imposing fine of Rs. 2,000/- (Rupees two thousand) and in default, simple imprisonment for another 1(one) month. As regards the charge under Section 307, IPC, the learned Trial

Court referring to the provisions of the said section, as recorded in the above quoted finding, held that none of the P.Ws. including the injured could bring the ingredients of Section 307 warranting conviction of the accused/respondent No. 1 under the said section.

17. So far as the victim is concerned, as noted above, he was examined as CW-1, who in his deposition stated that on 19.11.2010 at about 3.30 a.m., while he was sleeping in his house, his wife i.e. the accused/respondent No. 1 inflicted blow on his head with a spade and then he cried. Hearing his cry, people gathered. He took treatment at Dhubri Civil Hospital and further treatment at GMCH. In his cross examination, it was revealed that the accused/respondent No. 1 had brought a case against him under Section 498(A), IPC.

18. On perusal of the above evidence, while it is true that the accused/respondent No. 1 was responsible for the offence punishable under Section 325, IPC, the prosecution failed to establish the offence against her punishable under Section 307, IPC. As regards the sentence, the accused/respondent No. 1 is to undergo simple imprisonment for 6(six) months and also to pay a fine of Rs. 2,000/- (Rupees two thousand) and in default, simple imprisonment for another 1(one) month.

19. The learned trial Court considering the matter in its entirety and also the fact that the accused/respondent No. 1 is the mother of four children, was of the opinion that the ends of justice would be met if she is sentenced to undergo the aforesaid sentence for the offence committed under Section 325, IPC, I see no reason to interfere with the same. It is not a case in which the prosecution could establish the offence punishable under Section 307, IPC, nor it is a case in which any interference is called for in respect of the aforesaid sentence imposed on the accused/respondent No. 1 under Section 325, IPC.

20. In view of the above, the appeal stands dismissed. Registry shall send down the LCR along with a copy of this judgment and order to the learned Court below.