

(2019) 01 GAU CK 0065

In the Gauhati High Court

Case No : Criminal Revision Petition No. 249 Of 2010

Nitya Bora @ Nityananda

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 29-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 357(1)(b), 397, 401
Indian Penal Code, 1860 — Section 323, 325, 341

Citation : (2019) 01 GAU CK 0065

Hon'ble Judges : Hitesh Kumar Sarma, J

Bench : Single Bench

Advocate : TJ Mahanta

Final Decision : Partly Allowed

Judgement

Hitesh Kumar Sarma, J

1. This criminal revision petition is filed, under Section 401, read with Section 397 of the Code of Criminal Procedure, challenging the legality, propriety and correctness of the judgment and order, dated 20.10.2009, passed by the learned Sub-Divisional Judicial Magistrate (Sadar), Jorhat, as well as the judgment and order dated 18.05.2010, passed by the learned Sessions Judge, Jorhat, in Criminal Appeal No.35/2009, upholding the order of conviction as well as sentence recorded by the trial court of learned Sub-Divisional Judicial Magistrate(Sadar), Jorhat, referred to above.

2. I have heard Mr. TJ Mahanta, learned Senior counsel for the revision petitioners. I have also heard Mr. RJ Baruah, learned Additional Public Prosecutor, Assam.

3. I have perused the evidence recorded by the learned trial court and the judgments passed by learned trial Court as well as the learned appellate court.

4. The fact leading to the case is that, on 06.05.2006, one Smt. Mamoni Chutia

lodged an FIR before Madhapur Police Out Post alleging that at about 10.00 pm, on 03.05.2006, while her brother, Maina Chutia was returning home, riding a bicycle, after attending a marriage ceremony at a nearby place, the accused-revision petitioner wrongfully restrained him and thereafter assaulted him causing injuries to his person.

5. On receipt of the FIR, Madhapur Police outpost forwarded the same to Titabar Police Station, which registered a case, being Titabar PS Case No.48/2006, under Section 341/325 of the IPC, investigated into it, collected evidence, and finally, on completion of investigation, submitted charge-sheet against the accused-revision petitioner, under Section 341/323/325 of the IPC.

6. After exhausting all the legal formalities, the learned trial Court framed a formal charge against the accused-revision petitioner, under Section 341/323/325 of the IPC. The accused-revision petitioner pleaded innocence to the charges; therefore, the trial commenced.

7. Let me now peep into the evidence adduced by the prosecution witnesses to find out whether the charges framed against the accused-revision petitioner is established by such evidence.

8. The PW-1 is the victim/injured. His evidence is that while he was coming home back, riding a bicycle, he was restrained by the accused-revision petitioner in front of his house and assaulted him on his head as well as on his right cheek, causing injuries to his person. The accused-revision petitioner is stated to have used sharp weapon to cause the injuries. During the course of cross-examination of this witness, nothing could be elicited by the defence to discredit such evidence.

9. Let us, now, look into the evidence of the Medical Officer, who examined the victim/injured. The evidence of the Medical Officer, examined as PW-7, shows that the injured sustained lacerated injury on the left front parietal region which was stitched and also abrasion over right cheek. The C.T. Scan shows fracture of left frontal bone. Such evidence of the Medical Officer remains intact, even during his cross-examination. There is a suggestion to this witness that the injuries sustained by the accused revision petitioner might have been caused due to his falling on hard substance also to which this witness answered in the affirmative.

10. The other witnesses are not found to have direct knowledge about the occurrence. They had appeared at the scene of occurrence after hearing the alarm raised by the PW-1/injured.

11. The evidence of PW-3 is specific to the effect that on her arrival at the place of occurrence, she found the victim/injured lying on the ground.

12. Therefore, from the above evidence, it appears that the victim/injured is the only effective witness in this case and other independent witnesses are only witnesses, who heard about the occurrence from the victim/injured himself.

13. The evidence of the PW2 to PW6, need to be corroborated by the evidence of PW-1/victim to the effect that he had told them that it was the accused-revision petitioner, who had assaulted him. On a careful examination of the evidence of PW-1/victim, it does not appear that he had even remotely suggested that he had told about the accused-petitioner inflicting him the injuries. Therefore, on this point the evidence of the PW2 to PW6 stand on the footing of hearsay evidence, which cannot be acted upon without there being any corroboration. In such a situation, this Court is bound to rely upon that the evidence of PW1/victim only to find out whether the accused-revision petitioner committed the alleged offence or not. Since the evidence of the PW-1 remained unassailed during his cross-examination also and his evidence-in-chief is more than specific to the effect that the accused-revision petitioner assaulted him causing the injuries, there is no reason to disbelieve such evidence. However, the evidence of the PW-3 to the effect that he found the injured/PW-1 lying on the ground is indicative of the fact that when the injured was assaulted by the accused-revision petitioner, he fell down and the evidence of the doctor, examined PW-7, also shows that the injuries sustained by the injured might have been caused on falling on hard substance.

14. The fact that the accused-revision petitioner assaulted the injured is a fact remains undisputed throughout the evidence on record. It has also come out from the evidence that he was assaulted by the accused-revision petitioner while riding a bicycle. It is difficult to gather from the evidence on record as to which of the injuries was first in point of time. It is difficult to ascertain as to whether the injured/PW-1 sustained both the injuries on being assaulted by the accused-revision petitioner while he was riding the bicycle or any one of them was sustained by him on falling from the bicycle. That being so, the injuries sustained by the PW-1 on his right cheek, with bone fracture cannot be said, with certainty, to have been caused by the the accused-petitioner.

15. Therefore, in view of the evidence discussed above, that the accused-revision petitioner assaulted the injured while riding on a bicycle towards his home is indicative of commission of offence by the accused-revision petitioner, under Section 341 of the IPC. So far injury No.1, referred to by PW-7 in his evidence is concerned, it speaks of injuries covered by Section 323 of the IPC. The injury No.2, referred to by PW-7, in his evidence, although is grievous in nature, caused by blunt weapon, yet, as discussed above, it cannot be ascertained, beyond doubt, as to whether he sustained the said injuries before falling from the bicycle or after falling.

16. That being so, in the light of the above evidence and the discussions made thereon, this Court is of the view that it is unsafe to hold the accused-revision petitioner guilty for the offence under Section 325 of the IPC. However, the offences under section 323/341 of the IPC have been established by the prosecution beyond of reasonable doubt. Therefore, the conviction of the accused-revision petitioner, under Section 325 of the IPC and the sentence

imposed upon the accused-revision petitioner for commission of the said offence are set aside. So far the punishment under Section 323/341 of the IPC is concerned, this Court is of the view that instead of substantive punishment, imposing the maximum prescribed fine of Rs.1000/-and Rs.500/- respectively, under the said provisions of law, would meet the ends the justice.

17. Accordingly, the sentence of the accused-revision petitioner, under Sections 323/341 is modified and a fine of Rs.1000/- and Rs.500/- respectively, under said provisions of law is imposed. However, considering the fact that the injured was in medical treatment, as indoor patient, in the hospital for about 15 days for the injuries he sustained, he needs to be compensated for the injuries he sustained. That being so, in accordance with the provision of Section 357(1)(b) of the Cr.P.C, the accused-revision petitioner is directed to pay an amount of Rs.15,000/- as compensation, and in the event he fails to pay the compensation, he shall suffer simple imprisonment for two months.

18. Accordingly, the revision petition is partly allowed with the modifications above.

19. The accused-revision petitioner shall surrender before the learned trial Court to serve out the sentence within one month from the date of this order.

20. Send down the LCR along with a copy of this judgment and order.