
(2019) 01 GAU CK 0049

In the Gauhati High Court

Case No : Criminal Revision Petition No. 140 Of 2014

Prahalad Sarkar @ Pallab Sarkar

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 24-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397, 401
Indian Penal Code, 1860 — Section 279, 338, 357(A)

Citation : (2019) 01 GAU CK 0049

Hon'ble Judges : Hitesh Kumar Sarma, J

Bench : Single Bench

Advocate : SC Biswas, RJ Baruah

Final Decision : Partly Allowed

Judgement

[1] Heard Mr. SC Biswas, learned counsel for the petitioner as well as Mr. RJ Baruah, learned Additional Public Prosecutor, appearing for the State respondent No. 1.

[2] This criminal revision petition has been filed under Sections 401 read with Section 397 of the Cr.PC challenging the legality, propriety and correctness of the judgment and order, dated 13.02.2014, passed by the learned Sessions Judge, Morigaon in Criminal Appeal No. 31/2013 partially upholding the judgment and order, dated 30.07.2013, passed by the learned Chief Judicial Magistrate, in GR Case No. 127/2012 convicting and sentencing the revision petitioner.

[3] The learned trial court of Chief Judicial Magistrate, Morigaon, vide his judgment and order, dated 30.07.2013, convicted the accused-revision petitioner under Sections 279/338 of the IPC. The accused-revision petitioner was sentenced to simple imprisonment for 2 (two) months with a fine of Rs. 1,000/- with a default clause under Section 279 of the IPC and also sentenced him to simple imprisonment for 3 (three) months with a fine of Rs. 1,000/- under Section 338 of the IPC with a default clause.

[4] Against this judgment and order, passed by the learned trial court, the accused-revision petitioner preferred an appeal before the learned Sessions Judge, Morigaon vide Criminal Appeal No. 31/2013, referred to above.

[5] The learned appellate court, vide its judgment dated 13.02.2014, while upholding the order of conviction recorded by the learned trial court, observed that the punishment of the accused-revision petitioner under Section 338 of the IPC would be proper as the punishment prescribed therein is higher than the one prescribed under Section 279 of the IPC. The learned Sessions Judge, also referred in his judgment a decision of this court in the case of Hiran Mia -vs- State of Tripura, reported in 2010 GLT (Crl.) 228 to hold that the offence is punishable under Section 338 of the IPC.

[6] I have examined the judgment of the learned trial court as well as the learned appellate court and peeped into the evidence on record of the learned trial court as adduced by the prosecution witnesses.

[7] On examination of the evidence on record, it is found that the offending motor cycle had hit the injured minor girl causing injuries to her both legs necessitating further medical treatment. At the relevant time of offence, the injured was proceeding to school with her mother. The evidence adduced by the prosecution, which has been discussed in detail in the judgment of the learned trial court as well as by the learned appellate court. The evidence leaves no doubt in the mind of this court that it was due to the rash and negligent act on the part of the accused-revision petitioner which resulted in the injuries being sustained by the injured. The evidence discussed by both the learned courts below are so succinct that the only conclusion that the court can draw is that it was for the rash and negligent act, in driving the motor cycle, involved in this case, by the accused-revision petitioner that caused the injuries to the minor girl.

[8] Being a revisional court, this court is aware of the fact that except in glaring inconsistencies in the decision of the courts below with reference to the evidence on record, this court cannot interfere with its decision. Only in the event of illegality and impropriety and apparently wrong appreciation of evidence, re-appreciation of the evidence is permitted.

[9] Therefore, it does not appear to this court that the decision rendered by the learned appellate court, in the aforesaid decision suffers from any illegality or impropriety requiring interference by this court in exercise of its revisional jurisdiction in respect of the order of conviction.

[10] So far the punishment imposed upon the accused-revision petitioner is concerned, considering the facts and attending circumstances of the case, as revealed in the evidence on record, this court is of the view that the substantive sentence of imprisonment imposed by the learned trial court and reduced to 3 (three) months by the learned appellate court is not necessary and rather if fine of Rs. 1,000/- is imposed and if an amount under Section 357(A) of the IPC is granted would meet the ends of justice.

[11] Therefore, the substantive sentence imposed upon the accused-revision petitioner is set aside and the fine of Rs. 1,000/- imposed upon the accused-revision petitioner is retained and in default of the fine, he is to suffer simple imprisonment for 15 (fifteen) days.

[12] As has been indicated above, this court is of the view that if an amount of Rs. 5,000/- as compensation under Section 357(A) of the IPC is awarded in favour of the injured shall meet the ends of justice and in default of payment of compensation, the accused- revision petitioner shall suffer simple imprisonment for 1 (one) month. Accordingly, the judgment of the learned courts below is modified. The compensation amount, if realised, be paid to the victim injured.

[13] This revision petition is partly allowed.

[14] The accused-revision petitioner shall surrender before the learned trial court to serve out the sentence, indicated above, within 1 (one) month from the date of receipt of a certified copy of this judgment.

[15] Return the LCR along with a copy of this judgment.