
(2015) 12 GAU CK 0001
In the Gauhati High Court
Case No : Criminal Revision No. 320 of 2005

Santiram Saikia and Others

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 320, 397, 401
Penal Code, 1860 (IPC) — Section 320, 323, 324, 326, 34
Probation of Offenders Act, 1958 — Section 4

Citation : (2016) 1 Crimes 535 : (2016) 1 GLT 812

Hon'ble Judges : Rumi Kumari Phukan, J.

Bench : Single Bench

Advocate : H. Sarma, Addl. P.P., for the Respondent

Judgement

Rumi Kumari Phukan, J.—None appears for the petitioners. Heard Mr. H. Sarma, learned Additional Public Prosecutor, Assam, for the respondent State of Assam.

2. This Criminal Revision Petition under Section 397/401 of the Code of Criminal Procedure, 1973 is directed against the judgment dated 3.8.2004 passed by the Additional District and Sessions Judge (Adhoc), Lakhimpur in Criminal Appeal No. 1(1)2001, thereby dismissing the appeal preferred by the petitioner and convicting the petitioners under Sections 326/34 I.P.C. instead of Sections 324/34 IPC and imposing fine of Rs. 3000/- on each of the petitioners instead of only Rs. 3000/- imposed by the learned Trial Magistrate whereby upheld the judgment dated 13.12.2000 delivered by the learned Sub-Divisional Judicial Magistrate (Sadar), North Lakhimpur in G.R. Case No. 951/95 u/s. 326/34 IPC, convicting the petitioners under Section 324/34 IPC and sentencing the petitioner No. 1 and petitioner No. 2 to undergo R.I. for two years and to pay a fine of Rs. 3000/- in default to undergo S.I. for one month and releasing the petitioner No. 3 on probation of good conduct and to keep peace for one year.

3. The facts of the case is that - on 7.8.1995, at around 3 P.M. at Batomati Tiniali when the complainant Arun Das along with his brother Tarun Das and one

another were returning after attending a religious function of their aunt at Phutikhari gaon, the accused persons, namely Santiram Chutia @ Saikia along with his sons Atul and Deukon Saikia armed with machetes struck complainant's brother on his head, hands and other parts of the body over a simple incident of altercation and inflicted injuries. The injured fell down after running a little distance. It was further stated in the ejahar that the complainant's injured brother was taken to Lakhimpur after providing first aid at Ghilamara Primary Health Centre.

4. On the above facts, the complainant lodged a written ejahar before the North Lakhimpur Police station, whereupon the Officer-in-Charge of the Police Station, after making an entry in the General Diary, forwarded the same to the O/C Dhakuakhana as the place of occurrence falls under the jurisdiction of Dhakuakhana Police Station. On receipt of the said ejahar, Dhakuakhana P.S. Case No. 189/95 under Section under Section 326/34 I.P.C. was registered.

5. Accordingly, the police took up investigation and during the course of investigation police seized one "dao" and some blood stained clothes from the place of occurrence and recorded statements of the witnesses and after conclusion of the investigation, submitted charge sheet against the petitioners under Section 341/323 I.P.C. On appearance of the accused petitioners before the Court, the learned Trial Court after hearing the parties framed charges under Section 341/324 IPC, but subsequently altered the charges to one under Sections 326/34 IPC and framed the charge and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. The prosecution examined altogether seven witnesses including the doctor and the Investigating Officer. The defence also examined two witnesses including one doctor. The accused persons were also examined under Section 313 Cr.P.C. The plea of defence is of complete denial.

7. On conclusion of the trial, the learned S./D.J.M. found the accused persons, namely Santiram Saikia and Atul Saikia guilty under Section 324/34 I.P.C. and convicted them accordingly and sentenced them to undergo R.I. for two years and to pay a fine of Rs. 3000/-, in default, to suffer further simple imprisonment for a period of one month. The other co-accused Deukon Saikia was directed to execute a bond on the probation of good conduct under Section 4 of the Probation of Offenders Act, having regard to the age of the accused instead of sending him to imprisonment. Aggrieved thereby, the petitioners herein preferred an appeal before the Court of the learned Additional District and Sessions Judge (Ad-hoc), Lakhimpur, North Lakhimpur and the said Court after examining the evidence on record affirmed the conviction of the petitioners herein as aforesaid.

8. I have heard learned counsel for both the sides. It is the contention of the learned counsel for the appellant that the impugned judgment is liable to be interfered into in view of the fact that there is gross irregularities while appreciating the matters on record in proper prospective.

9. On the other hand, learned Additional Public Prosecutor has contended that there is no ground to interfere with the order of Judgment and conviction in view of the sufficient evidence given by the eye witnesses.

10. I have heard rival contentions of both the parties as well as gone through the evidence on record. It will be proper to appreciate the evidence on record.

11. The informant/P.W.1 Tarun Das has given a vivid evidence to the effect that on the day of occurrence there was an altercation between him and the accused Santiram Saikia on the matter of betel nut when he went to the shop of accused Santiram. But, at the interference of his brother Arun, P.W.4 the matter subsided. On the same day, in the afternoon, while P.W.1 was standing in the Batomari Bus Stoppage along with his brother P.W. 4 Shri Arun Das and his related brother-in-law P.W.3 Muhipal Das, all the accused persons armed with weapons in their hands attacked him and on this he ran away towards the backside of a house of Tulshi Das. All the accused persons chased him and accused Atul Saikia dealt a dao blow on the back of his head and other accused Deokan Saikia also dealt a dao blow on his hand which was resisted by him by raising his hands. The accused Santiram also dealt severe cut blow on his body. In the process, he sustained grievous cut injuries on his person. Due to such severe assault he fell down and became senseless and later on he was taken to Ghilamara Civil Hospital, North Lakhimpur wherein he was admitted as Indoor Patient since 17.9.1995 and, thereafter, he was referred to GMCH, Guwahati for better treatment.

12. P.W.3 Shri Muhipal Das (relative of P.W.1) and P.W. 4 Shri Arun Das (brother of P.W.1) were eye witnesses to the occurrence and supporting the case of the informant, both of them have stated that while they were waiting in the bus stoppage on 7.8.1995 after attending the death ceremony of his maternal aunt, at that time, they saw the accused persons armed with weapons like dao, lathi etc. and they chased P.W. 1 and out of fear, P.W. 1 ran away towards the compound of another house and the accused Santiram dealt a cut blow on the head of P.W.1 and all the accused persons conjointly attacked P.W. 1 wherein he fell down. Seeing the occurrence P.W. 3 and 4 ran after P.W. 1 to resist the accused persons from assaulting him and to desist accused Santiram from further assault, P.W. 4 dealt a blow with a lathi found nearby on the hand of Santiram and on that the dao held by the accused Santiram fell down and the other accused persons fled away.

13. All the accused persons has stated that due to such assault, the right hand of P.W. 1 was severed down, right ear was injured and there was cut injuries on the backside of the head apart from other injuries. All of them along with other people took P.W. 1 to Ghilamara Civil Hospital and, thereafter, he was referred to North Lakhimpur and after prolonged treatment, he was referred to GMCH, Guwahati, but due to non-availability of seat, he was admitted at City Heart Nursing Home. It is to be noted that the evidence of the injured is fully supported by these two eye witnesses in all material aspects and their presence

at the place of occurrence appears to be not doubtful. All the witnesses have also fairly admitted that prior to the occurrence, on the same day, there was an altercation between the accused and the injured/P.W.1 and this may be reason on the part of the accused persons to attack and assault P.W.1 as grudge to the incident that took place in the morning. There was no any material contradiction or omission in their evidence and the defence plea of denial could not exploit the evidence of these witnesses on any material aspect. However, one plea was taken by the defence that as they have filed a case against the witnesses, so the present case was filed on false implication, the petitioners have denied the same and also stated that they were acquitted from the said case so filed by the accused.

14. P.W.5 Shri Guna Kanta Hazarika and P.W. 6 Smti Nirumai Hazarika though are not eye witnesses to the actual occurrence, but had supported the case of the informant that on the fateful day, they found the injured P.W. 1 with severe bleeding on his person lying in front of their shop. However, seeing the incident, P.W. 6 informed the police. Their evidence is supportive of the fact that on the fateful day, P.W. 1 was found in severe injured condition and this witness has also supported the seizure of dao and blood stained cloths from the place of occurrence and thereby they have supported the circumstances of the case, as narrated by the other eye witnesses.

15. The evidence of the injured that he sustained severe cut injury, some of which is grievous in nature is supported by the findings so recorded by the Medical Officer/P.W. 2 Dr. Manashi Boruah, which is to the following effect:--

"No.1 - Sharp incised wound over left forearm - 6 inch in length-extending from medial side of the forearm, both bones are broken and exposed muscles lacerated and fresh and active bleeding present.

No. 2 - sharp incised wound over face on right cheek extending upto pinna of right ear - 5 inch in length-fresh wound-active bleeding present.

No. 3 - Sharp incised wound over back of the head in the occipital region - 6 inch in length-occipital bone is cut and exposed-Dura matter can be seen-fresh would-active bleeding present.

No. 4- Sharp cut incised wound over back of the right elbow joint - 2 inch in length-fresh wound-active bleeding present.

No. 5 - Sharp incised wound over chest - 2 inch in length-on right lateral region of the upper part of the chest."

16. According to the doctor, the injured was treated after making entry in the emergency register maintained in the hospital vide No. 14134 while she was on emergency duty. She has opined that the injuries were grievous in nature and caused by sharp cutting instrument. Ext. 5 is the injury report wherein Ext. 5(1) is her signature. In the cross-examination, she has stated that the victim directly appeared before the emergency ward. The injured was not referred by any

Primary Health Centre.

17. The findings of the M.O. is fully supportive of the fact that on the day of incident, P.W.1 sustained severe cut injuries on his person and the nature of the injuries itself is found to be grievous, as has been discussed and held by the appellate Court within the purview of Section 320 Cr.P.C.

18. The I.O. P.W. 7 Md. Sadder Ali, in his evidence has stated about the filing of the FIR and about seizure of dao and blood stained cloths etc. from the place of occurrence and about filing of charge-sheet at the conclusion of the trial.

19. Defence also examined two witnesses which is discussed below. D.W.1 Dr. Ganesh Saikia has testified that on 25.8.1995, at about 10.30 P.M. he had examined Shri Tarun Das and found one lacerated wound in the left forearm of uneven size which is simple in nature and caused by blunt weapon. Ext. Ka is the report. Thought the defence projected him to show that while examining P.W.1 he found one lacerated wound on his person, but in his cross-examination he has stated that as per Ext. 8 (Ka), he did not treat P.W. 1 Tarun Das, but one Dr. Manashi Baruah had treated him and has clarified that the name of the injured being similar to another injured person against Admission No. 14134, he has given Ext. Ka due to inadvertence and it is not applicable to the present case. Apparently, the evidence of D.W.1 is of no help to the defence story.

20. The plea of the accused petitioner Santiram Saikia was that on the day of occurrence, his son was assaulted by some persons in the morning and, in the afternoon, P.W. 1, P.W. 3 and P.W.4 along with other persons assaulted him with a lathi for which he sustained injury on his person for which he filed a FIR before the police at Ghilamara. The said evidence of accused Santiram did not lend support from any corner, rather P.W. 4 has fairly admitted in his evidence that while the accused Santiram chased his brother with a weapon in his hand, then he dealt a blow with a lathi in the hand of the accused only to desist him from further assault. In the circumstances, even if the accused petitioners Santiram sustained injuries on his person, it does not affect the credibility of the prosecution witnesses nor will strengthen the defence case that he was assaulted by the prosecution witnesses. It is also an admitted position that the present witness P.W. 4 and other against whom the case was filed by the accused Santiram already resulted in acquittal.

21. On the other hand, the evidence of the informant as well as the eye witnesses and other attending facts and circumstances appears to be convincing and inspires confidence in the mind of the Court that it was the accused petitioners who severely dealt cut blow on the person of the injured P.W. 1 for the simple matter of dispute over betel nut. The medical evidence has supported the ocular testimony of the injured as well as other evidence. The minor contradiction here and there is not destructive of prosecution case. The learned Court below has properly discussed about the point of delay and that has been satisfactorily explained by the prosecution and has discarded the plea of

defence.

22. The evidence on record, both oral and medical evidence, has amply proved that the injured person, namely Tarun Das sustained severe cut injuries on his person out of which some are fracture injuries and, as such, the Trial Court has rightly come to the conclusion that the offence under Section 326 IPC will be attracted as per definition of Section 320 IPC. In so far as the involvement of other accused persons is concerned, it has been brought on record that both the accused persons acted in concert while assaulting the injured/P.W.1 and has come to a finding of guilt of accused under Sections 326/34 IPC, as aforesaid. There appears no any irregularities and illegalities on the face of the record to justify interference with the judgment and findings of both the Courts below and the learned Appellate Court has rightly held the accused persons/petitioners guilty under Section 326/34 IPC instead of Section 324/34 IPC, as has been held by the Trial Court.

23. In view of the above matters on record and the findings so arrived at by the Courts below after all elaborate discussion, I find and hold that there is nothing to upset the order of conviction and sentence passed by the Courts below, as mentioned above.

24. Accordingly, the criminal revision stands dismissed with a direction to the accused petitioners to appear before the learned Trial Court to serve the sentence within a period of three months from the date of the order, failing which, the Trial Court will be at liberty to take consequential action for execution of the sentence.

Return the LCR forthwith together with a copy of this judgment.