
(2011) 04 GAU CK 0009

In the Gauhati High Court

Case No : Criminal Revision Petition No. 24 of 2003

Shri Khokan Malakar

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 326

Citation : (2011) 3 GLT 413

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

Bench : Single Bench

Advocate : S. Chakraborty, for the Appellant; A. Ghosh, Assistant Public Prosecutor, for the Respondent

Judgement

U.B. Saha, J.—The Petitioner has been convicted by the learned Chief Judicial Magistrate, North Tripura, Kailashahar u/s 326 of the Indian Penal Code (for short "the Code") vide judgment dated 19.5.2001 passed in Case No. GR 318 of 1998 and sentenced to undergo rigorous imprisonment for three years and also to pay a fine of Rs. 500/-, i/d/. to suffer further S.I. for three months.

2. Although the offence for which the Petitioner was convicted and sentenced is a non-compoundable one, but during the pendency of this revision petition, the victim Shri Paresh Malakar and the accused-Petitioner jointly filed an application before this Court which was registered as CrI. M. Application No. 81 of 2011 for exercising the inherent power of this Court for compounding the offence as both the victim Petitioner and the accused-Petitioner are cousin brothers and there was a case and counter-case between the parties and the incident happened at the hit of moment.

3. Mr. S. Chakraborty, learned Counsel appearing for the accused-Petitioner placed reliance on a decision of the Apex Court in Y. Suresh Babu v. State of A.P. reported in 2005 SCC 320 wherein the Apex Court taking note of the fact of that case granted leave as a special case to the parties to compound the offence on condition that the Appellant of that case would pay Rs. 10,000/- to the

Respondent No. 2 of that case by way of compensation for the physical injury suffered by him and the amount of compensation would be deposited in the Court of IInd Additional Metropolitan Sessions Judge, Hyderabad within one month from the date of order. It was ordered that if the amount was not deposited within the period allowed, the conviction and sentence recorded by the courts below against the Appellant of that case u/s 326 of the Code would stand.

4. Learned Counsel also placed reliance on another decision of the Apex Court in Jalaluddin Vs. State of U.P., wherein the Apex Court considered the conviction of the Appellant of that case for the offence u/s 326 of the Code and maintained the same and while considering the application filed for compounding the offence, the Apex Court specifically observed "The offence u/s 326 IPC is not compoundable and it cannot be compounded. The application for compounding is, therefore, rejected." However, considering the facts that the complainant and the Appellant of that case were close relations and had compromised the dispute outside the Court and were living amicably, the Apex Court reduced the sentence of the Appellant of that case to the period already undergone.

5. Mr. A. Ghosh, learned Addl. Public Prosecutor appearing for the Respondent State upon perusal of the application for compounding the offence and taking note of the fact that both the accused-Petitioner and the victim are in the Court along with their relatives and have stated that the matter has been amicably settled between the parties would contend that the Court can reduce the sentence, but the offence cannot be compounded in view of the decision of the Apex Court in Jalaluddin (supra).

6. In response to the submission of Mr. Ghosh, Mr. Chakraborty submitted that the punishment prescribed for the offence u/s 326 of the Code is imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, meaning thereby the Court has the power even to impose a minimum sentence of imprisonment for one month maintaining the order of conviction.

7. Taking into consideration the overall view of the facts and circumstances of the case and note of the fact that both the victim and the accused-Petitioner filed an application for allowing them to compound the offence in exercising the inherent power as stated supra, in the considered opinion of this Court, it is not necessary of this Court to discuss about the evidence recorded by the learned trial Court as this Court is not disturbing the order of conviction u/s 326 of the Code.

8. There is no doubt that a criminal offence is against the Society and not against an individual, but at the same time it is to be borne in mind that when the victim is satisfied with the subsequent behaviour of the accused-Petitioner who was on bail and the accused-Petitioner has been maintaining family relationship with the victim, it would not be proper to ignore the said fact while considering the sentence passed by the learned trial Court. Had there been any power with this Court to compound the offence then obviously this Court could have compound

the same, but in view of the decision of the Apex Court in Jalaluddin (supra), this Court cannot do so. Though in Y. Suresh Babu (supra), the Apex Court granted leave to the parties of that case to compound the offence u/s 326 of the Code as a special case, but it was clearly observed by the Apex Court in that case, that case would not be treated as a precedent.

9. In view of the above, this Court is not in a position to give the benefit of Y. Suresh Babu (supra) to the Petitioner herein, but it would also be improper to ignore the subsequent facts and the relationship which the victim and the accused-Petitioner are maintaining.

10. This Court has also taken note of the submission of Mr. Ghosh who in his usual fairness submitted that this Court may modify the sentence from 3 years" R.I. to 1 month"s R.I. and the fine money from Rs. 5,00/- to Rs. 1,000/-. This Court has also perused the evidence of P.W. 10, Dr. Sukumal Paul, who examined the victim Paresh Malakar wherefrom it appears that out of the five injuries, the injury over the left knee of the victim was grievous in nature and all other injuries were simple in nature though the injuries were caused by using a dao.

11. In view of the above, the sentence imposed by the learned trial Court upon the accused-Petitioner is hereby reduced from three years" R.I. to one month"s R.I. and the fine money is enhanced from Rs. 500/- to Rs. 1,000/-. The accused-Petitioner is directed to surrender before the learned Chief Judicial Magistrate, North Tripura, Kailashahar within one month from today to serve out the sentence whereupon the learned CJM shall take necessary steps for execution of the sentence. The accused-Petitioner is further directed to deposit the fine money to the learned trial Court within fifteen days and in default of payment of fine money within the aforesaid period, he shall suffer further ten days" simple imprisonment.

12. With the above observations and directions, this revision petition is disposed of.

13. Send down the L.C. records forthwith.