
(2017) 09 GAU CK 0002
In the Gauhati High Court
Case No : 301 of 2007

Shri Mridul Das, S/o Shri Nirman Das

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 01-09-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 397](#), [Section 401](#) - Saving of inherent powers of High Court - Calling for records to exercise powers of revision - Hi

Citation : (2017) 09 GAU CK 0002

Hon'ble Judges : Hitesh Kumar Sarma

Bench : SINGLE BENCH

Advocate : P Bhowmick, NJ Dutta

Judgement

1. This is a Criminal Revision Petition, filed under Sections 397/401 read with Section 482 of the Cr.PC, praying for setting aside the judgment and order, dated 23.08.2007, passed by the learned Sessions Judge, in Criminal Appeal No. 18/2007, sentencing the accused petitioner to suffer Simple Imprisonment for 3 (three) months under Section 323 of the IPC.
2. Heard Mr. P Bhowmick, learned counsel for the revision petitioner. Also heard Mr. NJ Dutta, learned Additional Public Prosecutor, appearing for the State of Assam.
3. I have perused the petition as well as the impugned order annexed with the petition.
4. The case for the prosecution is that, Sri Bapchand Das of Jorhat, filed an FIR on 02.11.2004 with the Jorhat Police Station, alleging that on 30.10.2004, at about 7:30 pm, the present accused petitioner along with other co-accused, Sri Nirman Das, Sri Ganesh Das, Sri Jitu Das and Sri Titu Das trespassed into his house, assaulted his father Sri. Bhebela Das with sharp and blunt weapons, causing injuries to his person.

5. On receipt of the FIR, the Jorhat Police Station registered a case, being No. 333/2004, investigated into it, collected evidence, arrested the accused persons, and finally, submitted charge-sheet against the accused persons under Sections 147/447/323 of the IPC.

6. The learned Trial Court explained particulars of offences to the accused persons, on their appearance, under Sections 147/447/323 of the IPC and the accused persons, including the present accused petitioner pleaded innocence. Accordingly, the trial commenced.

7. The prosecution examined as many as 7 (seven) witnesses in the case, including the Investigating Police Officer and the Doctor.

8. I have meticulously examined the evidence on record.

9. It appears from the materials on record that the PW6 and PW7 in this case are respectively the Doctor and the Investigating Police Officer. Other 5 (five) witnesses are from the same family.

10. The allegation made in the FIR as well as in the evidence of the PW2 that the accused petitioner assaulted his father/injured with a sword. PW2 stated that the accused petitioner entered into his house with an intention to assault him but as he was not available, the accused petitioner assaulted his father/injured. There is an admission from the PW2 himself that there was previous enmity between the parties for which he was targeted by the accused petitioner and the other co-accused.

11. The injured PW1 appears to be a person of 90 years of age on the date of occurrence. He is found to have stated in his evidence that the present accused petitioner assaulted him with a sword and the other accused persons assaulted him with a stick.

12. The concern in this present revision petition is the accusation levelled against the present petitioner, Sri Mridul Das.

13. According to the PW1, he was assaulted by the present accused petitioner with a sword.

14. The evidence of PW3, PW4 and PW5 makes it appear that the entry of the present accused petitioner along with other co-accused in their house, as alleged in the FIR, is substantiated and during the cross-examination, the defence failed to assail there entry to the house of the injured/PW1 in the late evening on the date of occurrence with intention to commit some offence.

15. The evidence of PW6, who is the Doctor clearly shows that he did not find any injury caused by sharp weapon, as alleged by the injured in his evidence, examined as PW1.

16. The evidence of the Investigating Police Officer/PW7 also makes it appear that the only injury, the kind of which is caused by stick could be found in the

person of the injured, which found corroboration from the evidence of the Doctor, examined as PW6.

17. The specific accusation against the present accused petitioner is that he has inflicted injuries on the person of the PW1 with a sword, which is not a fact in view of the evidence of PW6 that there was no such injury found which could have been caused by a sharp weapon. There is no allegation against the accused petitioner that he caused injuries to the injured/PW1 other than that of a sword. The allegation of causing injuries on the person of the injured with a stick is in respect of the other co-accused, not the present petitioner.

18. But, the fact remains that the present accused petitioner and other co-accused entered into the house of the injured/PW1 in a group in the late evening on the date of occurrence and the injured/PW1 was a person of 90 years of age for which a definite observation as to which of the accused person played what role cannot be made in such a situation.

19. Observation of different persons, to a particular incident, may be different. All persons witnessing an occurrence cannot be expected to observe a particular incident in a same way as the others.

20. That being so, inspite of the fact that the injured/PW1 did not specifically state that the present petitioner inflicted stick blow on his person, yet in the facts and circumstances of the case, it cannot be straight away said that he has no role in causing injuries to the injured/PW1.

21. I have found that the learned Trial Court as well as the Appellate Court of the learned Sessions Judge appreciated the evidence on record thoroughly and the judgment passed by the learned Trial Court was based on the evidence on record, and therefore, the learned Appellate Court of the Sessions Judge did not interfered with that except modification of sentence to a little extent.

22. This Court also, on scrutiny of the evidence on records, finds that there is no such illegality and impropriety in the judgment of the learned Trial Court and affirmed by the learned Appellate Court of the Sessions Judge to justify interference, so far the holding of the accused petitioner guilty of commission of the offences under Sections 323/447 of the IPC.

23. Therefore, the order of conviction of the accused petitioner is upheld. So far the sentence is concerned, the accused petitioner was sentenced to Simple Imprisonment for 3 (three) months and 1 (one) month, respectively under Sections 323/447 of the IPC. The Appellate Court of the learned Sessions Judge reduced the sentence from Simple Imprisonment for 1 (one) month to fine of Rs. 500/-.

24. I have considered the fact that the date of occurrence in this case is 30.10.2004 and the present revision petitioner has fought a long drawn legal battle till date and have now approached this Court. I have also considered the facts and circumstances of the case as well as the fact that the other co-accused

has already been enlarged on probation.

25. Taking into consideration the above aspects, instead of substantive sentence of 3 (three) months under Section 323 of the IPC, if the accused petitioner is imposed with a fine of Rs. 500, it will meet the ends of justice and so far sentence under Section 447 of the IPC is concerned, fine of Rs. 500/- imposed by the learned Appellate Court of the Sessions Judge after modifying the sentence, the same is enhanced to Rs. 1,000/-

26. Accordingly, the accused petitioner is sentenced to pay a fine of Rs. 1,000/- on each count under Sections 447/323 of the IPC, and in default, to suffer Simple Imprisonment for 15 (fifteen) days on each count consecutively. He is directed to surrender before the learned Trial Court within 15 (fifteen) days from today to undergo the sentence.

27. Accordingly, the present revision petition stands disposed of.

28. Send back the LCR along with a copy of the judgment.