
(2012) 04 GAU CK 0072
In the Gauhati High Court

Sri Gopal Sil, S/o.Late Haren Sil, Resident of Maharicamp, P.O
& P.S Gogamukh, District- Dhemaji, Assam

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Citation : (2012) 04 GAU CK 0072

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : Advocate : Mr. P. Talukdar, Adv.??Advocate : Mr. D. Das. Addl. P.P,
Assam, Advocates appearing for Parties

Judgement

1. This criminal revision has been filed challenging the legality and validity of the judgment and order dated 07012004 passed by the learned Sessions Judge, Dhemaji in Criminal Appeal No.11(1)/2003 convicting the petitioner u/s 323 of the Indian Penal Code (IPC) as well as u/s 342/34 IPC and sentencing him to undergo rigorous imprisonment (RI) for 6(six) months and to pay fine of Rs.1000/, in default, to undergo further RI for 1(one) month for the offence u/s 323 IPC and also imposing the sentence of 6(six) months RI for the offence u/s 342/34 IPC, to run concurrently.

2. The factual background of the case may be briefly noted.

3. On 24062001, one Smt. Likha Yabik of Naharlagun (Arunachal Pradesh) lodged a first information before the Gogamukh Police Station complaining that on 22062001 her husband had gone to the Mahari camp in the house of one Smt. Janaki Bardewa to arrange some labourers but he did not return home. On the day of lodging the ejahar, she could come to know that her husband was tied up in the house of one Shri Rajen Siwa (Bardewa) at Mahari camp and was assaulted. The first information was treated as FIR and on the basis of the same, Gogamukh P.S. Case No.88/2001 u/s 342/325 IPC was registered. After completion of the investigation, the police submitted charge sheet against 4(four) persons viz., Shri Gopal Sil Shri Goman Sing Paskuti Shri Raghu Nath

Paskuti Shri Rajen Bardewa The above 4(four) persons were formally charged by the learned Chief Judicial Magistrate, Dhemaji u/s 325/342/34 IPC on 04012002.

4. The prosecution examined as many as 7(seven) witnesses, viz., 1. PW 1 Smti. Likha Yabik (informant) 2. PW 2 Smt. Likha Yajum 3. PW 3 Shri. Likha Tad (victim) 4. PW 4 Smt. Licha Tapin 5. PW 5 Smt. Janoki Bardewa 6. PW 6 Dr. Padmeswar Pegu 7. PW 7 Shri Kamala Kanta Singh, Police SubInspector

5. The defence did not examine any witness but the defence plea was that of total denial.

6. After perusing the evidence adduced and after hearing both the sides, the learned Chief Judicial Magistrate by the judgment and order dated 19022003 acquitted Shri Goman Singh Paskuti and Shri Raghu Nath Paskuti but convicted Rajen Bardewa and Gopal Sil u/s 325/342/34 IPC. Both of them were sentenced to undergo RI for 3(three) years each and also to pay fine of Rs.1000/ each, in default, to undergo simple imprisonment of 1(one) month for the offence u/s 325 IPC. They were further sentenced to suffer RI of 1(one) year each for the offence u/s 342/34 IPC, both the sentences to run concurrently.

7. Aggrieved by their conviction and sentence as aforesaid, both Shri Rajen Bardewa and Shri Gopal Sil preferred appeal in the Court of the learned Sessions Judge, Dhemaji. The said appeal was registered as Criminal Appeal No.11(1)/2003. The learned Sessions Judge by the judgment and order dated 07012004 altered the conviction of the appellants from section 325 IPC to section 323 IPC but upheld the conviction u/s 342/34 IPC. The learned lower appellate Court accordingly reduced the sentence to RI for 6(six) months and to pay fine of Rs.1000/ each, in default, to undergo RI for 1(one) month each. Similarly, the sentence for the offence u/s 342/34 IPC was also reduced to RI for 6(six) months each, both the sentences to run concurrently.

8. Against the aforesaid altered conviction and sentence, the petitioner is before this Court in revision. On 02032004, the revision was admitted and while allowing the petitioner to remain on bail, this Court had stayed the execution of the sentence and realization of fine.

9. I have heard Mr. P.Talukdar, learned counsel for the petitioner as well as Mr. D.Das, learned Additional Public Prosecutor, Assam for the respondent state.

10. The learned counsel for the petitioner has pointed out some discrepancies in the prosecution case, such as nonseizure of the nylon rope with which the victim was tied, to argue that the prosecution has failed to prove the case against the petitioner beyond all reasonable doubt. He, contends that the learned lower appellate Court was not justified to convict the petitioner u/s 323/342/34 IPC and, therefore, prays for his acquittal. On the other hand, the learned Additional Public Prosecutor submits that there is no error in the judgment impugned and the scope of interference in revision being very limited, the revision petition should be dismissed.

11. The rival submissions have been duly considered. To appreciate the rival submissions, the relevant portion of the evidence may be briefly surveyed.

12. PW1 is the wife of the victim and the informant. She has stated that she had gone to the house of Janoki Bardewa (PW5) from where her husband was recovered by the police. She found injury marks on the body of her husband. According to her, PW3 (her husband) had told her that Gopal (petitioner) and Rajen had assaulted him alongwith other persons.

13. PW2 is the daughter of the informant (PW1) and the injured (PW3). She has stated that she accompanied her mother to rescue her father and found him in an injured condition.

14. PW 3 is the injured Likha Tad. He has stated that he came to Mahari camp at Gogamukh on 22062001 to engage some labourers on receiving telephonic information from one Dhan Bahadur. He came to the courtyard of the accused Rajen with whom some dues were outstanding, because of which there was some altercation. Rajen resides with his elder brother Dil Bahadur in the same house. At night when PW3 was sleeping in that house, he was severely assaulted by Rajen and other people out of whom he could identify Gopal. He also stated that both his hands were tied with a nylon rope and he was tied up in this manner in the compound of Rajen and Dil Bahadur for two days when the police rescued him on the night of 24062001. He was categorical in his evidence that accused Rajen and Gopal had assaulted him over different parts of his body.

15. PW4 had also gone to the place of occurrence and found the PW3 in an injured and naked condition.

16. PW5 is Smt. Janoki Bardewa, the wife of Dil Bahadur, in whose house the incident took place. She has stated that PW3 had come to her house to engage some labourers. At night, while the PW3 was sleeping at her house, accused Rajen and Gopal came there and assaulted him after tying him up with a rope. According to her, she was also assaulted when she protested. Ultimately, the injured PW3 and herself were rescued by the police.

17. PW6 is the doctor who had examined PW3 at the Gogamukh health centre. He has stated and indicated about the various injuries suffered by the PW3 and opined that it was a case of grievous injury.

18. PW7 is the Investigating Officer. He has stated that after receipt of the FIR (ext1), the officerincharge of the Gogamukh Police Station directed him to investigate the case. Thereafter, he went to the place of occurrence alongwith the relatives of the injured PW3. According to him, upon arrival of the police party, the accused persons fled away. He chased them and apprehended two of them, Rajen and Gopal. He has also stated that he found the injured PW3 in a serious condition unable to walk. PW5 told him about the incident. He took the injured to the hospital. After investigating the matter, he submitted the chargesheet.

19. On consideration of the evidence on record, the learned lower appellate Court

came to the conclusion that the act committed by the accused persons amounted to wrongful confinement within the meaning of section 340 IPC and, therefore, upheld the conviction u/s 342 IPC.

20. In so far the injury is concerned, the learned Sessions Judge held that the injury caused to the PW3 due to the assault of the accused persons stood proved by the evidence of PW3 and PW5. PW5 is the eye witness to the occurrence and she is the near relation of the accused Rajen, being his sisterinlaw. The occurrence took place in her residence and when she protested, she was also assaulted. There is no reason to disbelieve the evidence of PW5. Furthermore, the injury sustained by the PW3 has been supported by the medical evidence.

21. However, regarding the nature of the injury suffered by the PW3, whether grievous or simple, the learned lower appellate Court came to the conclusion that the injury was not grievous but simple. This is how the learned Sessions Judge considered the matter:

?Evidence of Dr. Pegu (PW 6) is not certain regarding nature of injury. To bring home the offence under the category of grievous hurt, the ingredients mentioned u/s 320 IPC must be there. I find that Dr. Pegu could not find any specific injury so as to attract section 320 IPC. But he was of the opinion that the injured might be suffering injuries to his vital internal organ. Thus, he suspected such injury but, there is no proof. Such injury report also does not show that the injuries detected by Dr. Pegu does not under any of the ingredients from first to eight mentioned u/s 320 IPC. Accordingly, I find and hold that the injury cannot be said to be a grievous injury. Then, it would come down to a case of simple injury?.

22. In view of the above, the conviction u/s 325 IPC was altered to conviction u/s 323 IPC. Consequently, the sentence was modified as already indicated above.

23. Having considered the matter dispassionately, I am of the view that there is no error or infirmity in the decision of the learned lower appellate Court, which had examined the matter in detail. Accordingly, the conviction and sentence imposed by the learned Sessions Judge, Dhemaji is upheld. Revision stands dismissed. Interim order passed on 02032004 stands vacated.

24. Petitioner to surrender before the learned Chief Judicial Magistrate, Dhemaji within 4(four) weeks from today to serve out the sentence.

25. Registry to send down the LCR forthwith.