

(2014) 01 TP CK 0006
In the Tripura High Court
Case No : Criminal Rev. P. No. 20 of 2008
Sri Nantu Nandi VsThe State of Tripura

Date of Decision : 22-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 222, 360, 397, 401
Penal Code, 1860 (IPC) — Section 300, 322, 323, 325, 34

Citation : (2014) 01 TP CK 0006

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : S. Sarkar, for the Appellant; R.C. Debnath, Addl. P.P., for the Respondent

Final Decision : Partly Allowed

Judgement

S. Talapatra, J.—Heard Mr. S. Sarkar, learned counsel appearing for the petitioner as well as Mr. R.C. Debnath, learned Addl. Public Prosecutor appearing for the state. This is a petition filed u/s 397 read with Section 401 of the Cr.P.C. against the judgment and order dated 18.01.2008 passed by the Addl. Sessions Judge, West Tripura, Khowai in Criminal Appeal No. 7(4) of 2007, whereby the judgment and order of conviction and sentence dated 23.11.2007, delivered in G.R. No. 12/2005 by the Judicial Magistrate, Khowai, West Tripura has been affirmed.

2. The petitioner, by the said judgment and order dated 23.11.2007 has been convicted u/s 325 of the IPC and sentenced to suffer two years RI and to pay fine of Rs. 5,000, in default thereof to suffer RI for three more months.

3. A written ejahar was filed by one Manindra Das (P.W. 1), disclosing that his son, namely Abinash Das (P.W. 7) while returning home had some altercation with the petitioner, but at the intervention of the people from that neighborhood they were separated and asked to leave that place. But, immediately thereafter the petitioner had reappeared in that place of occurrence and by a wooden shaft he had struck a blow on the region near the lower abdomen of the victim (P.W. 7), causing grievous injury. Thereafter, P.W. 7 was admitted in the hospital for about ten days for recuperation.

4. Based on the said ejahar, Teliamura P.S. Case No. 06/2005 under Sections 341/325/34 of the IPC was registered and taken up for investigation. After investigation, the charge-sheet was filed against the petitioner under Sections 341/325 of the IPC and the charge was accordingly framed, to which the petitioner pleaded complete innocence and claimed to face the trial.

5. In order to substantiate the charge, the prosecution adduced as many as eleven witnesses including the Investigating Officer, namely Satyabrata Gupta (P.W. 10), the victim, Abinash Das (P.W. 7) and the informant, namely Manindra Das (P.W. 1).

6. At the outset, Mr. S. Sarkar, learned counsel appearing for the petitioner has submitted that, the prosecution by dint of the oral testimonies of P.Ws. 1, 5, 6 and 7, has proved the occurrence of hurt received by P.W. 7 for assault of the petitioner and his treatment in the hospital for ten days. Mr. Sarkar, learned counsel has questioned the finding that the said assault was intended voluntarily to cause grievous hurt as defined in Section 322 of the IPC. According to Mr. Sarkar, learned counsel, from the evidence it can be gathered that the assault was intended to cause grievous hurt and as such no conviction u/s 325 of the IPC can be returned. Apart that, Mr. Sarkar, learned counsel has submitted that on a grave provocation and without any previous enmity the occurrence had taken place, but that aspect of the matter was not considered by the courts below while imposing the sentence. That apart, Mr. Sarkar, learned counsel has continued to submit that the petitioner was entitled to the benefit of Section 360 of the Cr.P.C., as there is no record as regards his criminal antecedent.

7. From the other side, Mr. R.C. Debnath, learned Addl. Public Prosecutor appearing for the state has submitted that there cannot be any direct evidence as regards the intention, but if the evidence as a whole is considered, the intention could clearly be gathered. He has referred to the injury report, where it has been recorded that the injury is of grievous nature in the abdomen.

8. For appreciation of the submissions made by the learned counsel for the parties, this court has meticulously surveyed the oral testimonies of P.Ws. 1, 5, 6 and 7. It has surfaced that the prosecution has established that the petitioner had assaulted P.W. 7 and caused that injury as referred. But, it also appears that the injury was a simple injury and except P.W. 7 no other witness has come forward to say that the petitioner had delivered several blows.

9. P.W. 7 has stated that the petitioner had suddenly appeared with a wooden shaft and with that he gave blows on his left ear and on his stomach and as a result of which, he lost his sense. But, from the injury report, no injury on his left ear is noticeable.

10. The other witnesses are formal in nature. For reference, P.W. 11, Sri Satyabrata Gupta has investigated the case and has narrated in the trial how he had conducted the investigation and filed the charge-sheet on completion of such investigation.

11. The contention as advanced by Mr. Sarkar, learned counsel appearing for the petitioner as regards the extension of benefit of Section 360 of the Cr.P.C., this court finds that the trial court has considered that aspect and later on held that such benefit cannot be extended to the petitioner.

12. So far the intention or knowledge of causing grievous hurt is concerned, it has been held by the Bombay High Court in Abdul Karim Vs. The State of Maharashtra, as under:

It is, therefore, clear that both according to Section 322 and the Explanation in order that a person may be guilty of an offence of causing grievous hurt, it must be proved that he either intended to cause or knew himself to be likely to cause grievous hurt and not otherwise. The learned Sessions Judge has observed rightly in para. 23 of his judgment that in the circumstances of the case, it cannot be held that the accused had the requisite intention contemplated by Section 300 of the IPC or he had the knowledge that by the fist blows he would cause rupture of the spleen. If that is so it should follow that having regard to the provisions of Section 322 and the Explanation to it, it could not have been held that the accused has committed an offence of grievous hurt.

13. On scrutinising the evidence meticulously, this court is not satisfied that the prosecution has proved that the petitioner has intention to cause grievous hurt. As such, the petitioner cannot be convicted u/s 325 of the IPC. But, it has been proved that the petitioner had caused hurt to P.W. 7 and as such, the said offence is covered by the provision of Section 323 of the IPC. Accordingly, without framing the formal charge and in exercise of powers conferred u/s 222 of the Cr.P.C., this court would convert the charge against the petitioner to Section 323 of the IPC from Section 325 of the IPC and hold the petitioner guilty of committing the offence punishable u/s 323 of the IPC for causing hurt to P.W. 7.

14. After considering the various aspects including the aspect of the sudden provocation and for absence of any criminal antecedent, this court would direct the petitioner to suffer the sentence of rigorous imprisonment for 6(six) months. The petitioner shall surrender to the court of the Judicial Magistrate, Khowai, West Tripura within a period of 15(fifteen) days from today, else the said court shall take stringent action against the petitioner for compelling him to suffer the sentence as indicated. Accordingly, this petition stands partly allowed to the extent as indicated above.

Send down the LCRs forthwith.