
(2012) 03 GAU CK 0109
In the Gauhati High Court
Case No : Criminal Rev. P. No. 05 of 2005

Sri Priyatosh Kapali

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 324

Citation : (2012) 03 GAU CK 0109

Hon'ble Judges : Prasanta Kumar Saikia, J

Bench : Single Bench

Advocate : A.C. Bhowmik, Mr. S. Saha and Mr. A. Bhowmik, for the Appellant;
R.C. Debnath, Spl. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.K. Saikia

1. This revision petition is directed against the judgment and order dated 31.08.2004 passed by the learned Assistant Sessions Judge, Dharmanagar, North Tripura in S.T. 06 (NT/D) of 2004 convicting accused-petitioner u/s 307 I.P.C. and sentencing him to suffer R.I. for 5 years and to pay a fine of Rs. 10,000/- in default to R.I. for another one year for the aforesaid offence as well as the judgment dated 16.12.2004, passed by the learned Additional Sessions Judge, North Tripura, Dharmanagar in Criminal Appeal No. 11 (3) of 2004 affirming the conviction but reducing the sentence, imposed upon the accused-petitioner from five years to three years. He also maintained sentence, in respect of fine, imposed by the Trial Court. Being aggrieved by and dis-satisfied with such judgments, this revision petition has been preferred on the grounds stated in the revision petition itself.

2. The facts and circumstances, leading to this revision proceeding, in short, are that on 06.10.02, in the morning at about 8/8.30 am, one Sri Sailen Sarkar, a cultivator was subjected to murderous assault near his house by the accused-

petitioner, Sri Priyatosh Kapali, for which Sri Sarkar sustained grievous wound on his hand. Being so attacked, he raised alarm for help and ran away from the place of occurrence. People immediately gathered there for which the accused-appellant fled there -from.

3. The injured was then taken to Pecharthal Hospital where he was treated for 2 days and thereafter, he was taken to Manu Hospital, where he was treated for 11 days under the care of doctor. An ejahar to this effect on being lodged by his brother, namely, Sri Prasanna Kapali with the police within hours of the alleged incident, Police registered a case and on completion of investigation submitted charge sheet u/s 307 I.P.C against the accused person.

4. Since the offence u/s 307 I.P.C. is exclusively triable by the Court of Sessions, the same was committed to the Court of Sessions at North Tripura. Learned Addl. Sessions Judge, North Tripura, Dharmanagar transferred the case to the file of Assistant Sessions Judge, North Tripura for disposal. Accordingly, the Assistant Sessions Judge, Dharmanagar, North Tripura framed charge u/s 307 I.P.C. and charge, so framed, on being read over and explained to the accused person, he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution had examined 15 witnesses in all. The statement of the accused person u/s 313 Cr.P.C. was recorded, his plea was of denial. However, he did not adduce any evidence. On conclusion of the trial, learned Trial Court came to the finding that the accused is guilty of offence u/s 307 of the IPC, convicted him accordingly and sentenced him to punishment, as aforesaid.

6. Being aggrieved by the judgment of the Trial Court, the accused-appellant preferred an appeal before the learned Sessions Judge alleging several infirmities in the judgment of the Trial Court. The learned Sessions Judge after hearing the parties affirmed the judgment of the trial court. However, he modified the sentence, imposed upon the accused-appellant by reducing the period of sentence from 5 years to 3 years. The learned Appellate Court also ordered him to pay a fine of Rs. 10,000/- in default, to suffer R.I. for another 1 year.

7. Still being aggrieved by the judgments of the Courts below, the accused-petitioner has preferred this revision alleging that the judgment of the Trial Court as well as the judgment rendered by the Appellate Court in Criminal Appeal No. 11 of 2004 are perverse, illegal and without any foundation whatsoever and therefore, learned counsel urges this court to set aside the judgment of the trial court as well as First Appellate Court. In support of his argument, learned counsel for the petitioner has referred the decisions of the Hon'ble Supreme Court in the case of Sarju Prasad Vs. State of Bihar, and in the case of Hari Kishan Vs. Sukhbir Singh and Others, .

8. However, learned Special Public Prosecutor appearing for the State-respondent has contended that the learned Trial Court and the First Appellate Court marshalled the evidence on record in proper perspective and in doing so, came to the conclusion that the prosecution has proved the charge u/s 307 of the IPC

beyond all reasonable doubt and such judgments rendered by Court below invite no interference, more so, when this Court is hearing the matter in its revisional jurisdiction.

9. Coming back to the argument advanced by the Learned counsel for the petitioner, I have found that the judgments of the courts below have been assailed on the ground; (a) the learned trial court convicted the accused of an offence as serious as offence u/s 307 of the IPC although prosecution failed to examine the doctors, who reportedly attended the victim at the hospitals; (b) The weapon, allegedly used in committing the offence under consideration, had huge implication on the allegation brought against the accused/petitioner.

10. But such a instrument of profound importance was not seized, and that too, without assigning any reason whatsoever which, in turn, administers a serious blow to the credibility of the prosecution case, under consideration. It has also been contended that there was absolutely nothing on record to show that the accused/petitioner, in fact, attempted to kill the victim on the day, aforesaid.

11. Now, let me examine how far above argument, advanced from the side of the accused petitioner, stands to reason. It may be stated, here that it is a settled proposition of law that in a revision proceeding, the Court would not re-appreciate the evidence on record or it would not consider the evidence on record in a way as has been done by court of appeal unless it is shown that the decision, rendered by the Court(s) below is perverse, illegal and has resulted in miscarriage of justice.

12. Keeping the above principle of law in mind, I have perused the materials on record. On such perusal, I have found that it is true that doctor has not been examined in the case under consideration. However, in a proceeding involving an offence U/s 307 of the IPC, non examination of the doctor, who attended the injured victim, may not always be fatal to the prosecution case since in order to prove the offence u/s 307 of the IPC, it may not be necessary for the prosecution to show that the victim has sustained wound(s) of grievous nature nay it may not even be necessary to show that the victim had sustained any wound.

13. What is required under the law is that the prosecution must have established an intention on the part of the accused person to cause the death of the person concerned. Equally important, it must also show that the accused did something to materialize his intention. But then, certain intervening circumstances prevented the accused person from causing the death of the person whom he wanted to kill. All these are to be ascertained from the facts and circumstances, which emerge from the evidence on record.

14. Coming back to our case under consideration, I have found that there is copious but clinching evidence to show that on the fateful morning, the accused-petitioner attempted to plant a blow with a dao on the neck of victim. However, victim's own timely action had saved him from being killed, for, evidence on record reveals that having seen the accused person attempting to plant a blow

with the dao on his neck, the victim raised his hand for which he could ward off the blow aimed at his neck but he had his hand cut and injured, while resisting the blow which was aimed at his neck.

15. Moreover, the evidence on record also reveals that being so attacked, the victim sustained wound on his hand which is simple in nature and was caused by sharp object. As stated above, he sustained such wound when he tried to save his life by frustrating a dao blow aimed at his neck. The sustaining of cut wound, of course of simple in nature, on his hand in the fact and circumstances of the case under consideration, becomes a forceful testimony to the fact that on the morning in question, the accused did attempt to plant a blow with a Dao on the neck of the victim.

16. However, some intervening circumstances aforesaid saved the victim from being killed. Thus, all the conditions required for proving a charge u/s 307 of the IPC are found well established in the case under consideration and in the face of above it does not lie in the mouth of accused-petitioner to say that the prosecution could not make out the charge of offence u/s 307 of the IPC brought against him.

17. The learned counsel for the accused-petitioner has again argued that Trial Court came to the conclusion that the victim sustained wound of simple in nature, caused by sharp object. But the Trial Court came to such a conclusion without obtaining the opinion of the doctor. According to learned counsel for the accused-petitioner, without having the evidence of the doctor on the point of nature of the wound before it, a Judicial Court cannot conclude that a particular wound is simple in nature and was caused by sharp object.

18. When there is no legal evidence on record to show that the victim sustained a simple wound caused by sharp object, the conclusion arrived at by the learned Trial Court on the basis of evidence of ocular witnesses that the victim sustained wounds of aforesaid nature becomes unsustainable in law and once it is found that prosecution could not establish that victim sustained any wound caused by sharp object, it becomes well nigh impossible for such a Court to come to the conclusion that the accused attempted to cause the death of the victim on the morning aforesaid.

19. Such an argument, advanced from the side of the defense, no way impress this Court since neither the Indian Penal Code and the Cr.P.C., nor the Evidence Act insists that there should be opinion of medical officer as the condition precedent to convicting a person of offence u/s 324 of the IPC, for, laws in the form of Section 324 of the IPC stresses more on the nature of the weapon than on the form or gravity of injury. The evidence of Medical Officer is, therefore, not indispensable for coming to a conclusion as to the nature of the wound as far as offence u/s 324 of the IPC is concerned.

20. In the case under consideration, there is indisputable evidence on record to show that the accused inflicted the wound on the hand of the victim with a Dao

and such a wound-- as has been rightly held by the learned Court ----was simple in nature and caused by sharp object. Thus, non examination of the doctor no way affects the prosecution case-when it is not obligatory on the part of the prosecution to examine the doctor to substantiate an offence U/s 324, IPC - and--- when it is not always obligatory for the prosecution show that the victim had sustained any wound in a proceeding involving offence u/s 307 of the IPC.

21. Here, it may also be stated that the learned counsel for the accused-petitioner had contended that non seizure of Dao, allegedly used in committing the crime under consideration, becomes fatal to the prosecution case. I have considered such allegation having regard to the materials on record and have found that non seizure of dao aforesaid is of no consequences to the prosecution case, more so, when there is indisputable evidence to show that the victim sustained cut wound on his hand and when such evidence irrefutably establishes that such wound was caused by a dao.

22. The learned counsel for the petitioner has referred me to the decisions, aforementioned but those decisions have no application to the fact and circumstances of the case under consideration since the facts and circumstances in the present case are found to be materially different from the facts and circumstances of the cases referred to above.

23. The learned counsel for the accused petitioner has also contended that there is no evidence on record to show that accused had attempted to cause the death of the victim on the morning in question. It is now evident from our foregoing discussion that accused did not attempt to cause the death of aforesaid person on the morning aforesaid and same needs no further discussion here. Suffice it to say that the allegation mounted on this count is without any basis whatsoever.

24. In view of what I have discussed here-in-before and what have emerged there-from, I am of the opinion that the accused petitioner could not show any infirmities, whatsoever, in the judgments impugned as far as conviction of the accused person u/s 307 of the IPC is concerned. But then, the sentence imposed on the accused-petitioner is found to be somewhat harsh and as such same needs to be interfered with to commensurate with the offence of which accused is found guilty.

25. Accordingly, I reduce the period of sentence from 3 years so imposed by the learned Appellate Court to two years. On the other hand, the fine imposed on the accused-petitioner is reduced from Rs. 10,000/- to Rs. 2000/- and in default of payment of fine to suffer R.I for 2 months for the offence u/s 307 of the IPC.

26. With the above modification, the Judgments of the Courts below are affirmed on partly allowing the present revision proceeding.

27. The accused /petitioner is directed to surrender before Trial court immediately to serve out the sentence. Return the L.C.R.