

(2019) 03 GAU CK 0068

In the Gauhati High Court

Case No : Criminal Revision Petition No. 376 Of 2015

Subal Chandra Das And Anr

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 25-03-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 397
Indian Penal Code, 1860 — Section 34, 325, 447

Citation : (2019) 03 GAU CK 0068

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : N. Zaman, S.K. Jain, A. Ganguly, M. Hassan, A. Bora, M. P. Borah, R.J. Baruah

Final Decision : Disposed Off

Judgement

1. Heard the Mr. S.K. Jain, learned counsel for the petitioners/accused as well as Mr. R.J. Baruah, learned Addl. P.P., Assam appearing for and on behalf of the State respondent.

2. By filing this revision u/s.401 read with Section 397 CrPC, the petitioners have prayed for setting aside and quash the judgment and order, passed by the learned CJM, Kamrup at Amingaon in G.R. Case No.5638/2008, dated 17.10.2014 convicting the accused/petitioners u/s.325 IPC, which was upheld by the court of learned Sessions Judge, Kamrup, Amingaon on 28.07.2015, in Criminal Appeal No.33(K-A)/2014.

3. The Palashbari P.S. Case No.131/2006 was registered on 10.08.2006, u/s.447/325/34 IPC, on the basis of a complaint petition filed by the informant Rubul Nath, before the learned CJM, Kamrup, who forwarded it to the Palashbari P.S., for filing of F.F.

4. The case of the prosecution as stated is that on 30.07.2006, the accused persons assaulted the father of the informant, causing serious injuries to him,

when he went to tell about their encroachment over a plot of land belonged to the village Namghar.

5. Police conducted investigation over the matter and after completion of the same, submitted charge sheet against the accused persons u/s.325/447/34 IPC. Both the accused persons appeared before the trial Court and denied the charges u/s.325/34 IPC, that was framed against them.

6. The prosecution examined nine witnesses in support of their case and the defence also examined one witness.

7. The accused persons were examined under Section 313 CrPC, wherein also they have denied the allegations. At the conclusion of the trial, the learned trial Court by its order dated 17.10.2014, passed in G.R. Case No.5638/2008 held both the accused persons guilty and convicted them u/s.325 IPC and sentenced each of them to undergo simple imprisonment for three years and to pay a fine of Rs.500/-, in default simple imprisonment for two months. On the appeal so preferred against the judgment, the learned appellate Court upheld the judgment and reduced the sentence to simple imprisonment for six months and to pay a fine of Rs.30,000/- each and the amount of fine was directed to be given to the victim as compensation, by its order dated 28.07.2015, in Criminal Appeal No.33(K-A)/2014.

8. Challenging the legality and validity of the aforesaid order, the present revision petition has been preferred by the accused persons on the ground that the learned appellate Court has committed error while affirming the conviction and sentence and failed to appreciate the evidence in a proper perspective.

9. I have heard the submission of learned counsel Mr. S.K. Jain for and on behalf of the accused/petitioners and Mr. R.J. Baruah, learned Addl. P.P., Assam, representing the State/respondent No.2.

10. Referring to the evidence on record, the learned counsel for the petitioners has submitted that there was no any eye witness to the occurrence even though the occurrence took place in a populated area and the so called eye witness i.e. PW.1 has admitted in his cross-examination that he has not seen the occurrence. Further it has also been submitted that there was no earlier enmity between the parties and the incident happened due to sudden altercation between the parties, without pre-meditation and considering the fact that the matter relates to the year 2006 (about 13 years back) and the accused persons have no earlier criminal antecedent, their case should be considered leniently.

11. The learned counsel for the State/respondent has however contended that the victim has sustained fracture injury on his nose which is supported by Medical Officers and the evidence of the victim cannot be discarded for having no eye witness to the occurrence, as it was a evening time. It is submitted that in view of the evidence of the victim supported by Medical Officers and all other facts and circumstances, the complicity of the accused persons have been proved.

12. Due consideration is given to the submission made before this Court. I have also gone through the evidence on record.

13. The victim in his evidence as PW.3 has stated that due to the dispute regarding the boundary of the village Namghar and the adjacent land of the accused petitioners, as he made some protest, suddenly he was assaulted by the accused with a stone for which his nose got fractured with bleeding. He was taken to a nearby PHC, wherefrom he was referred to GMCH but however he was admitted in the Sanjeevani Hospital, where his nose was operated.

14. The evidence of the victim that he sustained injury is supported by PW.1 (son of the victim) and PW.4 (a neighbor) that hearing hue and cry at the time of occurrence, when they arrived there, they found the victim in an injured condition with bleeding from his nose. The victim reported them that it was the accused persons who assaulted them.

15. Although the evidence of PW.2 is not so reliable, the evidence of PW.5 and PW.6 are not take into confidence as they were hearsay witnesses.

16. The PW.7 (the Medical Officer), who immediately attended the injured after the incident has stated that on his examination on 30.07.2006, he found one lacerated wound over left foot, size 3 cm x 6 cm x 5 cm and another lacerated wound over the upper part of the nose, size 1 cm x 0.5 cm, with bleeding and he was referred to the GMCH for better investigation.

17. Similarly the victim (PW.3) was examined by another Medical Officer/PW.9 at Sanjeevani Hospital, who is also testified that he found fracture injury on the person of the PW.3.

18. The learned trial Court although did not place explicit reliance upon the evidence of PW.1 and PW.2, they being not eye witnesses to the occurrence, but has relying upon the evidence of PW.3/injured, which is supported by two Medical Officers, came to the finding that the victim sustained fracture injury on his nose for the assault made by the accused/petitioners.

19. The evidence of DW.1 being cryptic was not taken into consideration.

20. The PW.4 although not an eye witness to the occurrence but has arrived at the place of occurrence immediately after the occurrence and found the injured lying on the road and he came to know that it was the accused/petitioners had assaulted him.

21. It is to be noted that the learned trial Court as well as the appellate Court has duly relied upon the evidence of victim and was of the view that evidence of the injured cannot be ignored in absence of enmity between the parties and his evidence can be accepted irrespective of corroboration and it is not at par with the evidence of accomplish.

22. After going through all entirety of the matter, it appears that there is no infirmity in the order of the appellate Court while affirming the sentence passed

by the learned trial Court. Accordingly it can be held that in view of the injury sustained by the injured, the case is liable to be convicted u/s.325/34 IPC.

23. At this juncture, I considered the submission of learned counsel for the petitioners that there was no earlier enmity between the parties and the incident has happened due to the sudden altercation between the parties and the injured was assaulted with a stone lying on the road but not by any sort of weapon even though they have iron rods in their hand. It has also been submitted that both the parties being neighbor, residing peacefully since after the incident that happened in the year 2006 and any severe punishment would lead to strain relation again between the parties and would result disharmony in the society.

24. In view of the submission made above as well as the nature of injury and the fact that there was no earlier criminal antecedent between the parties and to maintain their proper relation in the main stream of the society, while maintaining the conviction u/s.325/34 IPC, it is hereby directed that the accused/petitioners is hereby released, on due admonition and the petitioners will pay the fine amount of Rs.30,000/- each, totaling Rs.60,000/- (Rupees sixty thousands) (as directed in by the trial Court), as compensation to the injured, within a period of two months from the date of order.

25. In view of above, the revision stands disposed accordingly.

26. Return the LCR along with a copy of this judgment immediately.