

GAHC010006152012



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./87/2012

NOOR MOHAMMAD @ MD. NOOR MOHAMMAD ALI
SON OF NUR ALI R/O ANANDA NAGAR P.O. and P.S. NOONMATI, DIST.
KAMRUP M, ASSAM.

VERSUS

STATE OF ASSAM

Advocate for the Petitioner : MR.M H TALUKDAR

Advocate for the Respondent : PP, ASSAM

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. A.R. Sikdar,
Advocate.

For the Respondent : Mr. B. Sarma,
Addl. P.P., Assam.

Date of Hearing : 27.04.2023.

Date of Judgment : 09.05.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. A.R. Sikdar, learned counsel appearing for the appellant. Also heard Mr. B. Sarma, learned Addl. Public Prosecutor representing the State of Assam.

2. This is an appeal under Section 374(2) of the Code of Criminal Procedure challenging the conviction of the appellant in Sessions Case No.158(K-G)/2009.

3. The prosecution case against the appellant is that on 01.11.2000 at about 1 P.M., the appellant Noor Mohammad had attacked Shri Harendra Patgiri with a dao. In that incident, Harendra Patgiri sustained cut injuries on his left hand. In fact, the index finger of his left hand was chopped off.

4. Smti. Arupa Patgiri, the wife of Shri Harendra Patgiri had lodged the FIR before police on 02.11.2000.

5. Shri Harendra Patgiri was subjected to medical examination. The doctor found the following injuries upon him.

- (1) Cut injury in left hand with the right and middle finger.
- (2) Cut mark on the metacarpo phallengial joint.
- (3) Lower part of the index finger is totally cut. Cut part or tip was not brought to the hospital.
- (4) All the above injuries were found in the left hand.

6. The doctor opined that the cut injuries sustained by Shri Harendra

Patgiri was caused by sharp weapon and the nature of the injuries were grievous.

7. On conclusion of investigation, police filed the *charge sheet* against the appellant.

8. During the trial of the case, the prosecution side examined as many as 6(six) witnesses including the doctor and the police investigating officer. The appellant did not examine any witnesses.

9. On the basis of the evidence on record, the trial court arrived at the impugned finding.

10. I have carefully gone through the prosecution evidence.

11. The first witness is to be examined in this case, is Smti. Arupa Patgiri. The appellant Noor Mahammad is not known to her since prior to the occurrence. She has stated that she owned two kathas of land, near the house of the appellant, where she had cultivated vegetables. According to Smti. Patgiri, on the day of occurrence at about 1 P.M., the appellant along with a person named Mrinal Ali attempted to occupy her land. She has stated that at that moment, she and her husband Harendra Patgiri were working in their land. Arupa Patgiri has stated that after finishing their work in the land, they were returning home and while they had reached their house, the appellant along with some other persons arrived there and the appellant attacked her husband with a *dao*. She has further stated that the *dao* blow caused injuries on the left hand palm of her husband and the index finger of his hand was chopped off. Arupa Patgiri disclosed that after this incident, the appellant ran away. Arupa Patgiri immediately took her husband to the nearby police station

from where he was sent to the hospital.

12. In her cross-examination, she admitted that she had a land dispute with the appellant and the land is in her possession. Arupa Patgiri has stated that the FIR which she filed, was drafted by the policeman in the police station and she had put her thumb impression therein. Arupa Patgiri has explained that the FIR was lodged on the next day of the day of occurrence because on the day of occurrence, she was busy in treatment of her husband in the hospital.

13. The second prosecution witness is Shri Harendra Patgiri. He has stated in his evidence that when the appellant attacked him with a *dao*, he tried to resist him by raising his left hand and the *dao* blow fell on his palm, causing cut injuries. Harendra Patgiri has stated that the index finger of his left hand was cut off in that incident.

14. Harendra Patgiri has stated in his cross-examination that police had collected his chopped off finger

15. The third prosecution witness is Smti. Bimala Dutta. She has stated in her evidence that she knew nothing about the occurrence. She has stated that on the day of occurrence, she noticed policemen in her house who enquired about her name.

16. The fourth prosecution witness is Kalpana Patgiri. She is the sister-in-law of Arupa Patgiri. She has stated in her evidence that at the relevant time of the occurrence, she had seen the appellant attacking Harendra Patgiri with a *dao*. Kamala Patgiri has stated that she had seen that one finger of one hand of Harendra Patgiri was cut off.

17. In her cross-examination, Kalpana Patgiri has stated that she had seen the occurrence from a distance of about 40/50 feet. She has reiterated that the appellant had attacked Harendra Patgiri with a dao.

18. The fifth and the sixth prosecution witnesses are the doctor and the police investigating officer respectively. The doctor spoke about the medical report and the police investigating officer spoke about the investigation.

19. On scrupulous perusal of the prosecution evidence, I find that there are no discrepancies and contradictions in the evidence of Harendra Patgiri. The defence side pointed out that in the FIR it is alleged that Harendra Patgiri had sustained the injuries on his right hand whereas, in his evidence he has claimed to have sustained those injuries on his left hand.

20. It is a settled position of law that an FIR is not an encyclopaedia of entire case. The FIR need not contain all details. If the informant erroneously states something in the FIR, this ground alone cannot tilt the balance of the case in favour of the accused.

21. Regarding the evidentiary value of the Harendra Patgiri, I shall rely upon a decision of the Supreme Court that was delivered in *State of U.P. v. Naresh*, (2011) 4 SCC 324. In this case, the Supreme Court has held as under—

“27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an

injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719: (2010) 1 SCC (Cri) 107] , *Balraje v. State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] and *Abdul Sayeed v. State of M.P.* [(2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262])"

22. The evidence of an injured witness must be given due weightage unless there are some compelling circumstances. In the case in hand, I failed to find compelling circumstances to disbelieve him. His evidence is clearly corroborated by medical evidence.

23. I am of the considered opinion that the learned court below has correctly appreciated the prosecution evidence and arrived at a correct finding. The present appeal is found to be devoid of merit and stands dismissed accordingly.

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JUDGE

Comparing Assistant