

GAHC010012452023



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

Case No. : CRL.A(J)/115/2023

SANKAR PATOR
S/O-SRI CHAMPAK PATOR, R/O-GERUWAGAON, ATABARI, P.S.-
DHARAMTUL, DIST.-MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PUBLIC PROSECUTOR, ASSAM

2:SRI AJIT KUMAR BARMAN
S/O-LATE BIRENDRA BARMAN
R/O-DRY FISH MARKET
JAGIROAD
DIST.-MORIGAON
ASSA

Advocate for the Petitioner : MR. B HALDAR
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGMENT & ORDER

DATE: 11.12.2023
(Malasri Nandi, J)

Heard Mr. B. Haldar, learned counsel for the appellant and also Ms. B.

Bhuyan, learned Additional Public Prosecutor, Assam.

2. This appeal is directed against the judgment and order dated 17.07.2017 and 18.07.2017 passed by the learned Sessions Judge, Morigaon in Sessions Case No. 39/2017, whereby the appellant was convicted under Section 120(B)/307/511 IPC read with Section 4 of the Explosive Substance Act and sentenced to undergo rigorous imprisonment for a term of 10 years and to pay a fine of Rs.25,000/-, in default to pay the same to suffer rigorous imprisonment for 1 year for the offence under Section 120(B) IPC. (A) He was also sentenced to undergo imprisonment for 10 years and to pay fine for Rs.25,000/- and in default of payment of fine, to suffer rigorous imprisonment for 1 year for the offence under Section 307 IPC. (B) He was also sentenced to undergo rigorous imprisonment for life and fine of Rs.50,000/- and in default to undergo rigorous imprisonment for 2 years for the offence under Section 4 of the Explosive Substance Act, on pleading his guilty.

3. The factual matrix leading to the case of the prosecution is that on 24.07.2015 the informant lodged an FIR before the Officer In-charge, Jagiroad PS stating *inter alia* that on 23.07.2015 at about 7.20 PM, while he and his employee were sitting in his shop at Jagiroad Dry Fish market, suddenly some unknown culprits threw some article in a plastic bag. On opening of the said plastic bag by his employee, he could see the same as a grenade like article and they accordingly informed the police.

4. On receipt of the FIR, a case was registered being Jagiroad PS Case No. 305/2015 under Section 120(B)/307/511 IPC read with Section 4 of Explosive Substance Act. During investigation, seven persons including the present appellant were apprehended and after completion of investigation, charge-sheet was submitted against three of the accused persons, namely, the present appellant, Shankar Pator, Motiram Deuri and Jiten Pator under the aforesaid Sections of law.

As the offence was triable by the Court of Session, the same was committed accordingly.

5. During hearing of charge, the appellant pleaded guilty before the trial court that he had committed the offence as per order sheet dated 19.06.2017, which is reproduced as below:

“19.06.2017:

The accused person namely, Sh. Sankar Pator has been produced from the custody. Other two accused persons namely, Sh. Jiten Pator and Sh. Motiram Deuri are present.

During hearing on charge, accused Sankar Pator has stated in the open court that he committed the alleged incident at the behest of his leader Bidyut Angsong. The accused Sankar Pator has also stated that the said Bidyut Angsong is the leader of Tiwa Liberation Army and he performed the alleged incident as per instruction of said Bidyut Angsong. Therefore, accused Sankar Pator has submitted that he was actually not involved into the alleged incident, rather, he was used to perform the alleged incident.

The other two accused persons have submitted before the Court that they are not at all involved into the alleged incident.

Learned PP during hearing on charge has submitted that charge sheet has been filed against the accused persons u/s 120B/307/511 IPC r/w Section 4 of the Explosive Substance Act. Learned PP has also prayed for another date for hearing on charge.

Therefore, another date is fixed for hearing on charge.

Accused Sankar Pator is remanded back to custody till next date. The other two accused persons are directed to appear before the Court on the next date for charge hearing.

Fixed 03.07.2017 for hearing on charge."

6. Subsequently, on 17.07.2017 final order was passed convicting the appellant on his pleading guilty and the order of the learned Session court dated 17.07.2017 reads as follows:

"17.07.2017

The accused persons Jiten Pator and Motiram Pator are present.

The other accused person, namely, Sankar pator is produced from jail custody.

On earlier occasion, the jail authority was directed to do the needful regarding the treatment of the accused UTP Sankar Pator for his ailments as prayed for. However, no report has yet been submitted by the jail authority in compliance with the order.

The instant session case is pending for hearing on charge.

I have heard learned PP and the learned defence counsel for the accused person on the point of charge. The learned advocate Mr. U.C.Roy, Legal Aid Counsel on behalf of the accused.

During hearing, the accused Sankar Pator was asked about his treatment but, surprisingly he uttered that he does not want any kind of medical treatment for the disease from the jail authority and also admitted before the court that he committed the crime as alleged and pleaded guilty giving open challenge to the society that no one will be able to do anything to him. He has also given open challenge to the Sessions Judge in the open court that he will carry on his activities in the future stating that none can stop him from getting liberation for his outfit, for which, he is carrying out activities. He has shown utter misconduct and disregard to the bench openly in the presence of Learned PP, learned Defence Counsel as well as other learned Advocates. This accused has even insulted the Bench by speaking abusive languages in the open court. The accused Sankar pator repeatedly pleaded his guilty today, despite showing him consequences of guilty pleading. However, the accused Sankar Pator remained adamant enough and also threatened the court to repeat such type of subversive activities in the near future. The attitude and conduct shown by the accused Sankar Pator is liable to be condemned and cannot be condoned in any circumstances.

The learned PP, learned defense counsel & other Advocates present have reprimanded the misconduct of the accused.

After hearing the learned PP and the learned defense counsel, this Court deems it fit to punish the accused Sankar Pator on his plea of guilty in committing the offences.

The accused Sankar Pator is charge-sheeted by the investigating authority U/S 120(B)/307/511 of IPC r/w Section 4 of the Explosive Substance Act. The investigating authority after performing the necessary investigation has charge-sheeted the accused Sankar Pator along with others. Charge-sheet has been filed U/S 120(B)/305/511 IPC r/w Section 4 of the Explosive Substance Act. In this regard, this court is of the view that Section 307 of the IPC is itself is an offence relating to attempt to murder, therefore, adding Section 511 IPC with Section 307 by the investigating authority is immaterial.

I have gone through the entire materials on record after making plea of guilty by the accused and, accordingly, in exercised of power conferred U/S 129 Cr.P.C., I convict the accused Sankar Pator U/S 120(B)/307/511 IPC r/w Section 4 of the Explosive Substance Act. Thus, the accused Sankar Pator is convicted U/S 120(B) of IPC and accordingly, he shall be punished to undergo rigorous imprisonment for a term of 10 years and to pay a fine of Rs.25,000/- and in default to pay the same to suffer further rigorous imprisonment for 1 year. The accused person is again convicted U/S 307 and accordingly, he shall be punished to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.25,000/- and in default to pay the same to suffer further rigorous imprisonment for 1 year. Further, the accused is also found guilty U/S 4 of the Explosive Substance Act, 1908 and accordingly, he shall be punished to undergo rigorous imprisonment for life and shall be liable to pay fine of rs.50,000/- and in default to pay the same to undergo rigorous imprisonment for 2 years.

The charge hearing for the other two accused person is adjourned and shall be heard on the next date.

A copy of this order be furnished to the accused person free of cost and also send a copy of this order to the jail authority.

The order is delivered in the open court.

Fix 07.08.2017 for charge hearing."

7. After that charge was framed against the two other accused persons on 11.09.2017 and trial was proceeded with accordingly. Seven witnesses were examined by the trial court. After completion of trial, the statement of Motiram Deuri and Jiten Pator were recorded under Section 313 Cr.P.C. wherein they denied

their involvement in the case and pleaded their innocence.

8. After hearing the arguments of learned counsels for both the accused persons, the learned Sessions Judge acquitted the two other accused persons i.e. Motiram Deuri and Jiten Pator. Subsequently, this present appeal has been preferred by the appellant stating that on the same set of allegations, the accused/appellant was convicted on his pleading guilty.

9. It was urged by the learned counsel for the appellant that the learned trial court failed to record the statement of the appellant, while convicting the appellant on pleading guilty. The procedure adopted by the trial court in convicting the appellant was not in accordance with law. The learned trial court in the judgment dated 27.06.2022 has observed that no statement was recorded on his plea of guilt, as required under Section 229 of Cr.P.C.

10. It is also the submission of learned counsel for the appellant that from the order dated 03.07.2017 and impugned order dated 17.07.2017, it appears that at the time of convicting the appellant he was suffering from some ailment and no medical attention was given to him despite the order passed by the court. Therefore, under such circumstances, convicting the accused on his pleading guilty was not justified. It is also submitted that the appellant was not in fit state of mind to make any confession during that period. The learned trial court ought to have tried the appellant along with other co-accused persons, instead of convicting the appellant under major sections of law. Therefore, the impugned order dated 17.07.2017 passed by the trial court is bad in law and liable to be set aside.

11. According to learned counsel for the appellant, the other co-accused who were facing trial under the same Sections of law as that of appellant, had been acquitted by the trial court vide judgment dated 27.06.2022, as the prosecution had miserably failed to bring any material to show their involvement in criminal

conspiracy, attempt to murder and in the offence under Explosive Substances Act. In the trial, the prosecution had failed to prove that the seized grenade like article was an explosive substance. Under such backdrop, if assuming that the appellant had not pleaded his guilty, there was every possibility that he would get acquittal in this case, if he was tried along with other accused persons.

12. We have considered the submissions of the learned counsels for the parties and perused the statement of the witnesses recorded by the trial court. On the basis of the trial proceeded against the other two accused persons, except the Investigating Officer, six other witnesses were examined and they did not say anything regarding their involvement in the case as well as the appellant also. However, on pleading guilty by the present appellant verbally before the court of Sessions Judge, he was convicted as aforesaid.

13. Admittedly, no separate statement of the appellant was recorded on his pleading guilty by the trial court. Section 229 Cr.P.C. deals with conviction on plea of guilty, which reads as follows:

” if the accused pleads guilty the Judge shall record the plea and may, in his discretion convict him thereon”

On a bare look at the provision, it reveals that the trial judge has not followed the procedure as provided under Section 229 Cr.P.C.

14. In view of the above, we are of the view that though the appellant pleaded guilty before the trial court, the same is not in accordance with law. Hence, the order dated 17.07.2017 passed by the learned Sessions Judge, Morigaon in convicting the appellant on pleading guilty is hereby set aside.

15. Hence, the case is remitted back to the Sessions Judge, Morigaon with a direction for retrial of the same, from the stage of framing of charge.

16. Regarding bail, learned counsel for the appellant prayed to grant bail to the

appellant, as the matter has been remitted back to the trial court for fresh trial. In view of the fact that the appellant has been languishing in jail since the day of passing of the order i.e. 17.07.2017, which appears to be in violation of the procedure, we are of the view that the appellant's plea for release on bail has some force. However, we are of the view that the learned Trial Court should consider the same. Accordingly, on filing an appropriate application seeking bail, the learned Sessions Judge, Morigaon shall consider the appellant's application for bail at the earliest.

17. In the result, the appeal is allowed with the aforesaid observation.

18. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant