

GAHC010054442017



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

Case No. : CRL.A(J)/109/2017

SREEPRASAD HAZAM

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR A TEWARI (AMICUS CURIAE)

Advocate for the Respondent : MR. P BORTHAKUR(ADDL.PP, ASSAM)

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER (CAV)

Date : 14-08-2023

Heard Mr. A. Tewari, learned *Amicus Curiae*. Also heard Mr. P. Barthakur, learned Additional Public Prosecutor for the State/respondent.

2. This appeal has been preferred by the appellant challenging the judgment and order dated 31.07.2017 passed by the learned Asstt. Sessions Judge, Cachar, Silchar in Sessions Case No. 57/2015, whereby the accused/appellant was convicted under Sections 307/326 IPC

and sentenced him to undergo rigorous imprisonment for 7(seven) years and also to pay a fine of Rs.1,00,000/- for the offence under Section 307 IPC, in default of payment of fine, he has to suffer another period of one year. Further, the appellant was also sentenced to suffer rigorous imprisonment for 7(seven) years and also to pay fine of Rs.1,00,000/- for the offence under Section 326 IPC, in default to payment of fine, he has to suffer simple imprisonment for another period of one year. Both the sentences were directed to run concurrently.

3. The prosecution case in brief is that the informant who is the wife of the injured, lodged an FIR on 29.09.2013 before the Officer-in-Charge, Udharbond Police Station stating *inter alia* that on 28.09.2013 at around 9 p.m. while her husband Sampad Lal Rabidas was returning home from Doyapur Tea Estate, the appellant armed with a sharp *dao*, intercepted him on the road. As the accused/appellant tried to give a *dao* blow on his neck with an intention to kill him, he resisted him with his left hand, as a result of which, the *dao* blow fell on his hand, thereby his wrist joint has been severed. Having heard hue and cry, the neighbouring people came to the spot and saved the life of the victim.

4. On receipt of the complaint, a case was registered vide Udharbond P.S. Case No. 169/2013 under Section 341/307/326 IPC and investigation was commenced. During investigation, the statement of the witnesses were recorded and one *dao* with blood stain was seized. The injured was taken to the hospital. After collection of injury report, charge-sheet was submitted against the accused/appellant under Sections 341/307/326 IPC before the court of CJM, Cachar, Silchar. As the offence under Section 307 IPC is exclusively triable by the court of Sessions, the case was committed accordingly.

5. During trial in the Sessions Court, charge was framed under Section 341/307/326 IPC which was read over and explained to the accused/appellant to which he pleaded not guilty and claimed to be tried.

6. To prove the guilt of the accused/appellant, the prosecution examined 12(twelve)

witnesses. The accused/appellant did not adduce any evidence in support of his defence. After completion of trial, the statement of the appellant was recorded under Section 313 Cr.P.C. wherein incriminating materials found in the evidence of the witnesses were put to him to which he denied the same and pleaded his innocence.

7. After hearing the arguments advanced by the learned counsel for the parties, the learned Asstt. Sessions Judge, Cachar, Silchar convicted the accused/appellant as aforesaid. Hence, the appellant has preferred this appeal.

8. Mr. A. Tewari, learned *Amicus Curiae* has argued that the appellant was convicted for 7 years. However, since the date of judgment, the appellant has been detained in custody and has completed six years in jail *hazot*. The appellant may be released by undergone the period which he detained in custody. It is further submitted that the fine amount imposed by the learned trial court is excessive which is required to be reduced. It is also contended that the appellant is a poor person and he is not in a position to pay the said amount.

9. On the other hand, Mr. P. Barthakur, learned Additional Public Prosecutor has opposed the submission of the learned counsel for the appellant by stating that the conviction recorded by the learned trial court was as per provision of law. As the offence against the accused has been proved beyond reasonable doubt which cannot be interfered by this Court.

10. I have considered the submissions made by the learned counsel for the parties.

11. P.W.2 is the injured. From his deposition, it reveals that on 28.09.2023 when he was returning from his old house situated at Dayapur Tea Estate at about 9 p.m, to his new house in Dayapur Home Guard locality, he stopped his motorcycle at the shop of Abhay Mal. When he was chatting with Abhay Mal, the appellant came there with a long *dao* in his hand. When he asked the appellant as to where from he was coming so late at night, suddenly the appellant attacked him with the said *dao*. When he tried to save himself, he sustained cut injury on his left hand as a result of which, his wrist joint got severed. Due to the alleged

assault, he also sustained injuries on his face and head. Then he rushed to the house of Abhay Mal which was adjacent to his shop. He informed the matter to one Amrul Haque Laskar over phone. He came to the spot and tied his hand with a piece of cloth. He was taken to Udharbond PHC but he was referred to Silchar Medical College and Hospital(SMCH) and he was treated there. Due to the alleged assault, he became permanently disabled.

12. P.W.4 is the eye witness to the incident. According to him, on the date of incident, when he was at his tea stall cum pan shop located at Dayapur Home Guard Training Centre, the injured came to his shop in his motorcycle and when he was having a chat with P.W.2, suddenly the accused/appellant appeared with a *dao* in his hand. When the victim called the accused, the appellant hit the injured with a *dao* aiming at his neck. While the victim resisted the appellant by waiving his hand, he sustained cut injury on his left hand. His wrist joint got chopped off and fell on the ground. Having seen the incident, he came out from his shop and tried to restrain the accused but he went away. Blood was oozing out from the injuries of the victim.

13. The other witness P.W.1 is the informant who was not present at the time of occurrence. The remaining witnesses were also not present when the incident occurred.

14. The medical officer who examined the victim also supported the case of the prosecution. P.W.8 is the medical officer who deposed in his evidence that he was posted at SMCH as Asstt. Professor since 23.11.2013 to 15.05.2015. On 26.05.2014, he had issued medico legal injury report pertaining to the victim Sampdlal Rabidas vide MRD No. 773228 Hospital No. 3306. His report was issued on the basis of bed head ticket of the said patient. On verification of the bed head ticket, he found the following injuries of the said patient-

- (i) Already amputated left hand at the level of wrist joint.
- (ii) Incised wound circumferential 18" x 10" cm with bone deep extending from ulnar border to dorsum upper 1/3rd of left forearm.

(iii) Clinically fracture ulna left.

According to P.W.8, the injuries were caused by sharp weapon grievous in nature. There was alleged history of physical assault on the patient near Dayapur on 28.09.2013 at around 10 p.m. P.W.8 proved the medico legal injury report vide Ext. 4.

15. In his cross-examination, P.W.8 replied that as he was not posted at SMCH at the relevant time, as such, he could not say whether the patient was directly admitted in the orthopedic Deptt. of SMCH or not.

16. P.W.9 is another doctor of SMCH who examined the amputated portion of the severed hand. In his deposition, P.W.9 stated that on 30.09.2013 at about 12.30 P.M. one amputated portion of left hand on wrist level was received at the Dead House (Morgue) and he examined the said amputated portion of the left hand in reference to Udharband P.S. G.D. Entry No. 691 dated 28.09.2013 corresponding to Udharband P.S. Case No. 169/2013 u/s 341/307/326 IPC.

17. On examination of the said amputated portion of left hand which was in a plastic bag, he found the amputated portion of left hand with palm and all fingers being intact which was brownish in colour, rigor mortis partially present and the total length was 18 cm and breadth was 12 cm and a incised wound (chopped wound) present at the apex of the wrist joint, the margins were clear cut and ante mortem blood clot adherent to the margins of the wound where exposing the cut portion of the skin, soft tissues, muscles, vessels and bones. On examination, he found the following-

“The amputated hand was of human being. Age of the individual was above 17 years. Sex of the individual was male. The described injury was caused by sharp cutting heavy weapon. Approximate time since injury was 24 hours to 48 hours. P.W.9 also proved the report of amputated hand vide Ext.6.”

18. P.W.11 is the investigating officer who deposed in his evidence that on 28.09.2013, he

was posted at Udharbond Police Station as attached officer. On that day at about 10.16 p.m., the officer-in-charge, Udharbond P.S. received an information from one Amrul Haque Laskar over telephone that somebody has caused injury to Sampadlal Rabidas near Home Guard Camp, Dayapur Tea Estate. Accordingly, a GD Entry was recorded vide Udharbond P.S. GD Entry No. 691 dated 28.09.2013 and directed him to investigate the matters. Then he proceeded towards the place of occurrence. On the way, he met the victim near Udharbond Post Office who was being brought to the police station by local people. Thereafter, he took the injured to Udharbond PHC. As the injury of the victim was serious in nature, the attending doctor advised to take the victim to SMCH. Accordingly, the victim was shifted to SMCH. Thereafter, he visited the place of occurrence, drew the sketch map vide Ext.9. During his visit to the place of occurrence, he found a severed portion of the hand of the victim and he accordingly made inquest of the same vide Ext. 2. He prepared a challan for sending the severed human left hand to SMCH for examination. During the course of investigation, he seized a motorcycle of the victim and subsequently, it was given zimma to the victim. He examined the witnesses and recorded their statements. The accused was arrested and then he also produced the said *dao* which he utilized for committing the offence. He seized the said *dao* having blood stained with wooden handle vide Ext. 3 seizure list. As he was transferred, he handed over the case diary to the O/C concerned police station.

19. Subsequently, P.W.10 completed the investigation and submitted charge-sheet against the accused/appellant under Section 341/307/326 IPC vide Ext. 8.

20. It is an admitted fact that the appellant committed the offence of assault causing injury to the victim as a result of which his wrist joint has been severed and accordingly amputated. The learned *Amicus Curiae* also stated that for last six years, the appellant has been detained in custody and prayed to consider the period of detention and release him accordingly. No other point has been raised during hearing.

21. The next question that arises for consideration is whether the injuries which were received by the injured Sampadlal are sufficient to make out a case for the offence under

section 307 IPC or not. For which we have to reproduce the section 307 IPC which reads as follows:

“Whoever does any act with such intention or knowledge, and under any circumstances that, if he by that act caused death, would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

22. Now the question is whether the conviction of the appellant under section 307 IPC is sustainable. In order to determine whether an offence under section 307 IPC is made out, the crucial fact to be considered is the intention and knowledge of the appellant with which the injuries were inflicted and not the gravity of the injury, reason being that even the injury is minor or there may be no injury at all, then also an offence under section 307 IPC may be made out, provided, the other ingredients of the offence under section 307 IPC are present.

23. In order to bring home a charge under section 307 IPC for attempt to commit murder, the prosecution need to prove that the accused did any act with such intention that if by the act of the accused, death would have been caused, the accused would be liable for commission of murder under section 302 IPC. Therefore, in order to establish the charge under section 307 IPC, all the ingredients of section 302 IPC, except, death is required to be proved. It is, therefore, the intention or knowledge with which the accused did the act is of primary importance and not the gravity of the injuries.

24. In the instant case, it reveals from the evidence of the injured that on the date of incident, while he was talking with P.W.4, the accused suddenly came there with a *dao* in his hand and tried to strike him on his neck with an intention to kill him. As he raised his hand to resist the appellant, the blow of *dao* falls in his left hand as a result of which, his left wrist joint has been severed from the hand. The eye witness i.e P.W.4 also supported the fact by stating that the accused appellant attacked the victim with a *dao* and due to the alleged

assault caused by the appellant, he sustained injury on his wrist joint which has been severed from his left hand.

25. From the evidence of the injured, the eye witnesses and the other witnesses examined by the prosecution, it cannot be ascertained whether the injured had any animosity with the appellant for which he suddenly came to the spot and assaulted the victim. Further, from the evidence of injured it also cannot be said that the appellant had come to the spot with an intention to kill the victim.

26. Except the injuries sustained by the victim on his left hand wrist joint, he also received injuries on his face, the nature of injured parts of the body selected for causing injuries clearly suggest that the accused did not have the intention to cause death of the deceased. Thus, having regard to the nature of the injuries and the attending facts and circumstances of the case, this Court is of the view that the requisite intentional knowledge to constitute the offence to attempt to commit murder under section 307 IPC cannot be attributed to the appellant. And as such, the conviction and sentence of the appellant under section 307 of IPC is not sustainable. Accordingly, the conviction and sentence of the appellant under section 307 of IPC is set aside. But the conviction and sentence under section 326 of IPC is maintained.

27. In so far as the sentence is concerned, it is found that there is nothing on record to show about the criminal history of the appellant and he has also remained in custody for last 6 years. Further, the offence is stated to have been committed in the year 2013, about 10 years back and therefore, the accused appellant had been suffering from mental trauma and misery since last 10 years and with the efflux of time, he has also become 67 years of age. Therefore, instead of awarding the sentence of further imprisonment, it is just and fair to award the sentence of imprisonment for the term of a period already undergone by the appellant and as such, the impugned judgment of conviction and order of sentence is modified accordingly.

28. The appeal is dismissed. However, the appellant has to pay the fine amount. The fine amount imposed by the learned Sessions Court seems to be on higher side and required to be modified so as to commensurate with the gravity of the offence. Therefore, this Court is of the view that Rs.25,000/- would meet the ends of justice, in default of payment of fine, the appellant is sentenced to undergo simple imprisonment for 3(three) months. Fine, if realised, be paid to the victim as compensation.

29. LCR be returned back.

JUDGE

Comparing Assistant