

GAHC010121912012



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

Case No. : Crl.A./153/2012

DILIP DAS and ANR,

2: RATAN DAS

BOTH ARE SONS OF LATE BULU DAS AND RESIDENT OF CHOWKIDINGI
UDAYPUR

P.O.

P.S. and DIST. DIBRUGARH
ASSAM

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.P J SAIKIA

Advocate for the Respondent :

BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR

Advocate for the appellants : Mr. K. Baruah

For the respondents : Mr. B.B. Gogoi, Addl. PP, Assam

Date of hearing : 29.08.2023

Date of Judgment/Order : 29.08.2023

JUDGMENT & ORDER

Date- 29.08.2023

Heard Mr. K. Baruah, learned counsel for the appellants. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam appearing for the State respondent.

2. This appeal under Section 374(2) of the Code of Criminal Procedure, (for short 'Cr.P.C.'), has been preferred against the impugned Judgment and Order, dated 02.03.2012, passed by the learned Sessions Judge, Dibrugarh in Sessions Case No.34/2009 convicting the accused appellants under Sections 326/34 of the Indian Penal Code (for short 'IPC') and sentencing to undergo rigorous imprisonment for 3(three) years and to pay fine of Rs.1,000/- (Rupees one thousand) each, in default of payment of fine, to undergo simple imprisonment for another period of 1(one) month.

3. The prosecution case, in brief, is that one Moneswari Das, lodged an F.I.R. before the officer-In- Charge, Dibrugarh Police Station alleging, *inter-alia*, that on 07.07.2008 at about 9 o'clock, when her son, namely Rajib Das, the victim was coming home from the nearby shop, the accused appellants along with Smti. Champa Das, Smti. Sarla Das, Smti. Rina Das and Smti. Rupa Das being armed with dao, lathi, etc. attacked the victim causing multiple injuries by sharp cutting weapons on his chest, hand, neck etc. and one of his fingers was also amputated. Immediately after the occurrence, the victim was hospitalized in Assam Medical College and Hospital, Dibrugarh. On receipt of the F.I.R., Dibrugarh P.S. Case No.309/2008 under Sections 147/326/307 of the IPC corresponding to G.R. No.1226/2008 was registered and investigation

commenced.

4. During the course of investigation, the police visited the place of occurrence, prepared sketch map of the place of occurrence and recorded the statements of the witnesses. The injured was medically examined in the Assam Medical College and Hospital, Dibrugarh. After completion of the investigation charge sheet was laid against the appellants under Section 341/326/307/34 of the IPC.

5. On receipt of the charge-sheet the learned Chief Judicial Magistrate, Dibrugarh took cognizance of the offences and having found the offence under Section 307 of the IPC exclusively triable by the Court of Sessions committed the case to the Court of learned Sessions Judge, Dibrugarh for trial and accordingly Sessions Case No.34/2009 was registered. The Court of learned Sessions Judge, Dibrugarh after hearing the parties framed charges under Sections 326/34 and 307/34 of the IPC against both the accused appellants to which the accused appellants pleaded not guilty and claimed to be tried.

6. In order to establish the charges under Sections 326/34 and 307/34 of the IPC, the prosecution examined as many as 8(eight) witnesses including the Doctor and the Investigating Officer. Thereafter, the accused appellants were examined under Section 313 Cr.P.C. They, however, pleaded not guilty and denied to adduce any evidence in their defense. On conclusion of trial, vide the impugned judgment and order dated 02.03.2012, the learned trial Court acquitted the accused appellants from the offence under Section 307 of the IPC and convicted them under Section 326 r/w 34 of the IPC and sentenced as stated above.

7. Being aggrieved and dissatisfied with the impugned judgment and order dated 02.03.2012 the appellants have preferred the instant appeal.

8. The F.I.R. vide Ext.-1 disclosed the allegation, in short, that the present accused appellants and 4(four) others, being armed with deadly weapons such as dao, lathi etc. assaulted the informant's son namely Rajib Das, who was returning home from a nearby shop, on road near their (informant) house. It was further alleged that the accused appellants and their associates inflicted cut injuries on his (Rajib) chest, hand, neck, finger etc. and as a result, one of his fingers was amputated. The substance of the aforesaid allegation disclosed cognizable offence and thereby presented a broad picture and features of the occurrence. In order to amount to 'grievous hurt' defined in Section 320 of the IPC, it speaks of hurt, *inter alia*, in its Clause Eighthly, any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits.

9. P.W. 6 Dr. Uttam Konwar, the doctor of Assam Medical College and Hospital, Dibrugarh, who examined the injured Rajib Das on 08.07.2008 at 12.40 a.m. (midnight) in Casualty Department, found the following injuries-

“(1) Incised wound 4 cm in length in the anterior chest wall on the left side

(2) Incised wound 6 cm in length on the anterior chest was on left side

(3) Abrasion 2 cm in length on left side of the neck

(4) Complete avulsion of ring finger of the left hand.

(5) Partial amputation of the distal phalanx of little finger on left hand.

(6) Incised wound over the proximal phalanx of middle finger.”

The doctor (P.W. 6) deposed that “*Type of weapon is sharp cutting and*

the injury no.5 is grievous in nature- rest are simple. The patient was discharged on request against medical advice."

He recognized Ext.-2, the medico legal report issued by him. In cross-examination, the doctor deposed that he did not receive any police requisition and that he was identified by his parents.

10. Now, let us appreciate the evidence on record.

11. P.W. 3 Rajib Das was the injured. His evidence disclosed that on 07.07.2008 at about 9 p.m., while he was returning home from a shop, on his way and when he reached near the house of the two accused appellants, they along with others named in the F.I.R. apprehended him. Both the accused appellants inflicted cut injuries on his person. Initially appellant Ratan inflicted cut injury below his chest, neck and hand. The said appellant chopped off two fingers of his left hand. On the other hand, appellant Dilip cut on his left hand shoulder and at the wrist joint of right hand. At that moment, his parents arrived and witnessing their arrival, the assailants fled away. Thereafter, he was shifted to Shankardev and then to medical by an ambulance. He was admitted for one night and discharged on the following day. He continued treatment, thereafter, for about 12(twelve) days as outdoor patient. As a result of the injuries, his left hand has become disabled to work as before.

12. In cross-examination, he, *inter alia*, stated that the approach roads to their house and that of the appellants are almost conjoined. Hearing his hue and cry, his family members came out. The appellant had filed a bicycle theft case and since then, he had no cordial relation with them. He denied the

defence suggestion that he in inebriated condition went to assault the appellants accusing them for filing a bicycle theft case against him.

13. Now, coming to the evidence of P.W.1 Maneswari Das (mother of P.W. 3), P.W. 2 Shankar Das (Father of P.W. 3) and P.W. 4 Sujit Dhar (a tenant under the family of P.Ws 1, 2 and 3), it is revealed that at the relevant time of the alleged occurrence, that is, on 07.07.2008 at about 9 p.m., P.Ws 1 and 2 were at their courtyard while the P.W.4 was with the injured P.W.3, who were returning home from shop after closing it. From their evidence, it is also revealed that the accused appellants are their adjacent neighbours and they witnessed the entire occurrence. According to them, the accused appellants attacked P.W.3 with sharp cutting weapons on road near to their houses. They witnessed the alleged occurrence in the flash of light at the spot, which is marked 'A' in the sketch map of the place of occurrence vide Ext. 3 prepared by P.W.8 S.I. Tilok Chandra Bora, the investigating officer. P.Ws 1 and 2, the parents of the injured P.W. 3, in their cross-examination reaffirmed their version of the occurrence given in their examination-in-chief. P.W. 4, of course, stated in cross-examination that hearing hue and cry, he stepped out of his house and witnessed the occurrence. The evidence of parents (P.Ws 1 and 2) of the injured (P.W.3) cannot be discarded in the absence of any credible evidence of previous enmity which induced them to depose falsely against the accused appellants, who are their close neighbours. Therefore, they (P.Ws 1 and 2) being belonged to the same family (parents) and consequently being partisan witness has no foundation, more so when the severity of injuries on the person of P.W.3 is distinctly corroborated by the doctor P.W. 6 as stated above and they (P.Ws 1 and 2) corroborated affirmatively the above stated

evidence of P.W. 3, the injured. Even P.W. 4 too corroborate the testimony of the injured P.W. 3.

14. P.W. 5 Niranjan Singha did not witness the alleged occurrence and his evidence appears to be hearsay. P.W. 7 Tinku Kumar Sah, whom the prosecution declared as a hostile witness, appears to be a hearsay witness.

15. The evidence of P.W. 8, the investigating officer has stated about the steps he had undertaken during investigation. From his cross-examination, it is revealed that there was no street light on the road of occurrence and that he could not recover the weapons of offence from the accused appellants. Here, it may be noted that in view of availability of direct evidence of P.Ws 1, 2 and 4, who withstood the tests of cross-examination corroborating the evidence of the injured P.W. 3 and when P.W. 6, the doctor in his findings and opinion on the injuries sustained by him (P.W. 3) corroborated and when there is no evidence to the contrary thereof, inability to recover the weapons of offence has no adverse evidentiary significance to the prosecution case. It is not a *sine qua non* for conviction. On the other hand, as the investigating officer did not investigate to explore the possibility of source of light other than the street light at the place of occurrence does not cloud the identification of the accused appellants, who are adjacent neighbours of the injured (P.W.3). The defence has neither explained nor adduced any evidence to show any preponderance of probability as to how P.W. 3 sustained the injuries proved in this case.

16. In their statements under Section 313 Cr.P.C., the accused appellants pleaded innocent and declined to examine any witness in defence. Therefore, their suggestions put to the prosecution witnesses have remained not proved. The charges under Sections 326/34 of the IPC stands proved beyond all

reasonable doubt.

17. For the reasons, set forth above, this Court is of the opinion that no interference in the impugned well-reasoned judgment and order is called for.

18. Accordingly, the appeal stands **dismissed**.

19. The accused appellants are directed to surrender to serve out the sentence.

Appeal stands disposed of.

Return the LCR.

JUDGE

Comparing Assistant