

GAHC010239902019



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

Case No. : Crl.Rev.P./417/2019

MOHANLAL KARMAKAR
S/O- LATE BADGO KARMAKAR, R/O- KHOOMTAIE BAMLINE GAON, P.O.
BOTAMORA, P.S. MORANHAT, DIST.- CHARAIDEO, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE P.P., ASSAM.

2:SRI SUSHANTA CHOUDHURY
DIVISIONAL IN-CHARGE
TINSUKIA DIVISION
KHOOMTAI TEA ESTATE
R/O- KHOMTAI BAMLINE GAON
P.O. BOTAMORA
P.S. MORANHAT
DIST.- CHARAIDEO
ASSAM
PIN- 782445.

3:SRI ANIL TANTI
S/O- LATE RAMESWAR TANTI
R/O- KHOMTAI TEA ESTATE
TINSUKIA
LINE
P.O. MORANHAT
P.S. MORANHAT
DIST.- CHARAIDEO
ASSAM
PIN- 785670

Advocate for the Petitioner : MR. S N TAMULI

Advocate for the Respondent : MR. K K DAS(ADDL.PP, ASSAM)

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGEMENT AND ORDER(CAV)

Date : 26-07-2023

Heard Mr. S.N. Tamuli, learned counsel for the petitioner. Also heard Mr. K. K. Das, learned counsel for the State/respondent No.1.

2. The petitioner has filed an application under Section 397/401 Cr.P.C. against the impugned judgment and order dated 28.03.2019 passed by the learned JMFC, Charaideo at Sonari in G.R. Case No. 308/2012, whereby, the petitioner was convicted under Section 326 IPC and sentenced to undergo rigorous imprisonment for 1(one) year and also to pay a fine of Rs.3,000/-and in default to undergo further simple imprisonment for 2(two) months.

3. The petitioner has also challenged the impugned judgment dated 05.08.2019 passed by the learned Additional Sessions Judge, Charaideo at Sonari in Criminal Appeal No. 02(2)/2019, whereby, the appeal preferred by the petitioner was dismissed.

4. The case of the petitioner is that on 09.06.2012, the respondent No. 2, one employee of Khomtai Tea Estate, Tinsukia Division lodged an FIR before the Officer-in-Charge, Moranhat Police Station stating *inter alia* on 09.06.2012 at about 5 p.m., the accused petitioner namely Mohanlal Karmakar and another were stealing the green tea-

leafs from their garden. When the respondent No. 3 i.e. the victim, who was the chowkider of the garden at the relevant time, while tried to prevent the accused/petitioner, the victim was assaulted by him with sharp weapon causing grievous injuries on his person. Thereafter, the victim was taken to garden hospital for treatment.

5. On receipt of the FIR, a case was registered vide Moranhat P.S. Case No. 84/2012 and after completion of investigation, charge-sheet was submitted against the petitioner under Section 326 PC. During trial, prosecution examined 7(seven) witnesses including the medical officer. No witness was examined on behalf of the accused/petitioner. On completion of trial and after hearing the learned counsel for the parties, the learned trial court convicted the accused/appellant under Section 326 IPC as aforesaid.

6. Being aggrieved by the aforesaid judgment, the petitioner preferred an appeal before the learned Addl. Sessions Judge, Charaideo. On hearing the appeal, the learned Addl. Sessions Judge has dismissed the appeal dated 05.08.2019. Hence, this revision.

7. Mr. S.N. Tamuli, learned counsel for the petitioner has submitted that the learned trial court as well as the appellate court has failed to appreciate the evidence on record in proper perspective and other materials on record. On perusal of the evidence of the witnesses, it can safely be concluded that there is no ingredients to constitute an offence under Section 326 IPC and as such, the accused/petitioner cannot be convicted under the said provision of law. Hence, the impugned judgments are liable to be set aside.

8. It is also the submissions of the learned counsel for the petitioner that the learned trial court as well as the appellate court have failed to appreciate the facts that all the witnesses produced by the prosecution side are interested witnesses and as such, the entire case of the prosecution was based on interested witnesses. No independent witness was adduced by the prosecution side.

9. The learned counsel for the petitioner has further argued that the learned trial court as well as the appellate court have failed to appreciate the fact that there was contradiction in the story narrated in the FIR and what has been stated in the charge-sheet. In the FIR, the informant has projected a case of tussle between the victim and the accused persons while accused/petitioner was stealing green tea leafs but in the charge-sheet, the investigating officer has clearly denied any such incident of stealing. Such contradiction clearly creates serious doubt about the story narrated in the FIR which is the foundation of the entire case. It is also pointed out that the victim might have sustained injury in some other place and has falsely implicated the accused/petitioner with the incident at the behest of the informant. Under such backdrop, it can be said that the impugned judgments and orders are bad in law and liable to be set aside.

10. On the other hand, Mr. K.K. Das, learned Additional Public Prosecutor for the State, states that the scope of High Court while exercising its jurisdiction under Section 397/401 Cr.P.C is very narrow and the Court cannot re-appreciate the evidence. It is further submitted that both the courts below have found the evidence of the

injured, complainant as trustworthy. Accordingly, the learned Addl.P.P. submits that the conviction be maintained.

11. The scope of the revision petition under Sections 397/401 Cr.P.C. is very limited. In ***State of Kerala v. Manimaran***, reported in ***(2019) 13 SCC 670***, the Hon'ble Supreme Court observed as under:

"16. As held in State of Kerala v. Puttamana Illath Jathavedan Namboodiri,, reported in (1999) vol. 2 SCC 452, ordinarily it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions Court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained."

12. In the case of ***State of Haryana v. Rajmal***, reported in ***(2011) 14 SCC 326***, the Supreme Court observed as under:

"14. In State of A.P. v. Pituhuk Sreeinvasa Rao (2000) vol. 9 SCC 537, this Court held that the exercise of the revisional jurisdiction of the High Court in upsetting the concurrent finding of the facts cannot be accepted when it was without any reference to the evidence on record or to the finding entered by the trial court and the appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically

supervisory in nature."

13. It has been also held by the Hon'ble Supreme Court, in **Amar Chand Agarwalla v. Shanti Bose**, reported in **(1973) 4 SCC 10** that *"the revisional jurisdiction of the High Court under Section 439 CrPC is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice."*

14. In the case of **State of Kerala v. Puttumana Illath Jathavedan Namboodiri**, reported in **1999 vol. 2 SCC 452**, the Supreme Court observed as under:-

"Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the

same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice....”

15. I have perused the judgments of the learned trial court as well as learned appellate court. The allegation against the petitioner is that on the date of the incident, while he was stealing tea leafs from Khomtai Tea garden, the victim as the chowkidar of the said garden prevented him to do so, as a result of which he was assaulted by the petitioner with a sharp cutting weapon causing grievous injuries on his person.

16. After evaluating the evidence of the witnesses, the learned Magistrate has convicted the accused/petitioner under Section 326 IPC and sentenced him to undergo rigorous imprisonment for one year. On appeal, the learned Addl. Sessions Judge has confirmed the conviction.

17. The medical officer was examined in the case as P.W.6. He deposed in his evidence that on 09.06.2012, he was working at Khomtai Tea Estate as medical officer. On that day, he examined the victim. On examination, he found one sharp cut injury on his left bicep, cut injury on right palm, sharp cut injury on lower back and sharp cut injury on his left forearm. The medical officer also opined that the injuries were grievous in nature caused by sharp weapon. The cross-examination of P.W.6 was declined which implies that the victim had sustained sharp cut injury on his person on the date of incident caused by the accused/petitioner.

18. After two courts have appreciated the deposition of the victim and other witnesses and found that the victim to be trustworthy, this Court cannot re-appreciate the evidence while exercising its jurisdiction under Section 397/401 Cr.P.C. and substitute its own conclusion to the one arrived at by the Courts below. It cannot be said that the appreciation of evidence by the learned JMFC, Charaideo, is so perverse that no court would have come to the same conclusion.

19. Situated thus, the judgment passed by the learned Addl. Sessions Judge, Charaideo in Criminal Appeal No. 2(02)/2019 dated 05.08.2019 is sustained.

20. Regarding sentence, it appears from the record that the incident is of the year 2012, more than 10 years have elapsed after the incident. Considering the facts and circumstances of the case, nature of the offence and the punishment imposed on the accused/petitioner, this Court deems it appropriate to reduce the sentence from one year to one month. The period which he detained in custody shall be set off from the period of imprisonment imposed on him. The fine amount will remain as same imposed by the learned trial court. The petitioner is directed to pay the amount of Rs.5,000/- before the learned trial court, if not paid earlier. Accordingly, the revision petition is disposed of with aforesaid modification.

21. Send back the LCR.

JUDGE

Comparing Assistant