

GAHC040003682024



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

Case No. : IA(Crl.)/16/2024

Atum Parang
Age: 36
Occupation :
Address: Son of Shri Rai Parang
resident of Lorah Village
PO Bameng
PS Khenewa
East Kameng District
Arunachal Pradesh

VERSUS

The State of AP and Anr
A
Address: represented by the PP of AP

2: Rallo Welly
Address: Son of Shri Nana Welly
resident of Model Village
PO Seppa
East Kameng District
Arunachal Pradesh

Advocate for : Pritam Taffo
Advocate for : P P of AP appearing for The State of AP and Anr: Advocate , appearing
for 2, respectively.

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 15.05.2024

Heard Mr. P. Taffo, learned counsel for the applicant. Also heard Ms. L. Hage, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application under Section 389 of the Cr.P.C., 1973, praying for suspension of the sentence dated 21.02.2024, passed by the learned Sessions Judge, Bomdila, West Kameng, in Bomdila Sessions Case No. 12/2019, whereby, the accused/appellant, namely, *Shri Guchi Parang*, has been convicted and sentenced to 3 (three) years rigorous imprisonment with a fine of Rs. 5000/- (Rupees Five Thousand) under Section 325 IPC and rigorous imprisonment for 4 (four) years with fine of Rs. 5,000/- (Rupees Five Thousand) under Section 367 IPC and in default of payment of fines, to undergo further simple imprisonment of 3 (three) months and for release of the accused appellant on bail, pending disposal of the criminal appeal No. 10(AP)2024.

3. The accused appellant, namely, *Shri Guchi Parang*, along with one *Bongali Lorah* were put on trial in the Court of Sessions Judge, Bomdila, in Sessions Trial No. 12/2019 for the offence punishable under Sections 325/367 IPC. The accused applicant *Shri Guchi Parang* was held guilty by the Trial Court and co-accused was ordered to be acquitted.

4. The case of the prosecution narrated in the judgment and order dated 21.02.2024, passed by the learned Sessions Judge, Bomdila, West Kameng, in Bomdila Sessions Case No. 12/2019 is as under:

On 13.07.2015, one Rallo Walley has given the ignition key and sent his brother-in-law namely Shri Jacob @ Chakap Rangmo to medical colony, Seppa, for bring his red colour pulsar bike. Near medical colony at the parking area,

there was 2 red colour pulsar bike having similar appearance was parked. Jacob @ ChakapRangmo inserted the ignition key in one of the bike and drove the same but on the way he was stopped by Guchi Parang and Bongali Lorah alleging that he has stolen the bike. In fact the bike drove by Jacob @ ChakapRangmo was not the one belongs to Guchi Parang and not Rallo Walley but coincidently the bike belongs to GuchiPareang was started by the key belongs to the bike of Rallo Walley. Guychi Parang and Bongali Lorah have apprehended Jacob @ ChakapRangmo on allegation of stealing bike belongs to Rallo Walley, they have tied him and taken to their resident. They have physically assaulted Jacob @ ChakapRangmo and broken one of his teeth. Jacob @ ChakapRangmo was immediately taken to the district hospital Seppa for treatment. There was talk of mutual settlement of the dispute amongst the parties but no settlement could be arrived at & on 16.07.2015 Rallo Walley has filed written FIR before OC PS Seppa. On receipt of FIR, OC PS has registered Seppa PS Case No. 76/15 U/s 324/325/367/34 IPC.

5. In the course of trial, 6 (six) Prosecution Witnesses and 1 (one) Defence Witness were examined before the Court.

6. The learned Sessions Judge, Bomdila, upon evaluation of the evidences on record, in the final analysis held as under:

“ Prosecution alleged that accused Guchi Parang and Bongali Lorah in furtherance of their common intention have abducted the victim and physically assaulted him and caused grievous hurt. Informant and IO has specifically deposed that both accused namely Guchi Parang and Bongali Lorah have abducted the victim and physically assaulted him. However, the victim during

his examination has deposed that he knows and can identify accused Guchi Parang who has abducted him and physically assaulted him and broken one tooth. Hence, this court came into conclusion that accused Guchi Parang has abducted the victim and physically assaulted him and caused grievous hurt to him. In present case though Bongali Lorah is one of the accused but victim has not specifically deposed as to whether Bongali Lorah is also one of the accused who abducted and physically assaulted the victim. Even the prosecution witnesses have failed to specified exact act committed by accused Bongali Lorah to bring him within the definition of offence committed in furtherance of common intention as provided U/s 34 IPC. Hence, this court held that prosecution has failed to prove it the offence against Bongali Lorah beyond reasonable doubt. However, prosecution has proved it beyond reasonable doubt that accused Guchi Parang is the person who has abducted and physically assaulted the victim and committed offence punishable U/s 325 IPC.

In view of above discussions and decisions arrived at regarding the above points for determination it is hold beyond reasonable doubt that accused Guchi Parang and his companion has abducted victim for voluntarily causing grievous hurt and infact physically assaulted him and caused grievous hurt by breaking right upper canine teeth and thereby committed offences punishable under sections 325 and 367 IPC. Accordingly accused Guchi Parang is convicted under section 325 & 367 IPC. However, prosecution could not prove the guilt of accused Bongali Lorah beyond reasonable doubt as such he is entitled to be acquitted from present case on benefit of doubt. He is acquitted from present case and set him at liberty.

In present case offence U/s 325 IPC is punishable upto 7 years and offence U/s 367 IPC is punishable upto 10 years with fine as such the convict is

not eligible for consideration U/s 360 of CrPC or protection of offender act. However, after consideration of entire materials on records and the age of convict lenient consideration is adopted while sentencing the convict. Convict Guchi Parang is sentenced for rigorous imprisonment for 3 years and payment of fine of Rs. 5,000/- for the offence of voluntarily causing grievous hurt punishable U/s 325 IPC. Guchi Parang is further sentence to undergo rigorous punishment for 4 years and payment of fine of Rs. 5,000/- for the offence of abducting the victim in order to cause grievous hurt punishable under section 367 IPC which this Court finds just and will serve cause of justice. In default of payment of fines the convict is to undergo further simple imprisonment of 3 months in addition to the above sentences. All of the sentences are to run concurrently."

7. This present application has been filed by one *Shri Atum Parang*, who is the brother of the accused/appellant, praying for release of the accused appellant on bail pending disposal of the appeal by suspending the sentence of 4(four)years.

8. Mr. P. Taffo, learned counsel for the applicant, while referring to the statement and the deposition of the victim/PW-2 recorded before the Police and Court, submits that the victim has not mentioned the name of the accused/appellant in his statement recorded under 161 of the Cr.P.C. It is only before the Court, the victim had deposed that he remembered one of the person who had tied and assaulted him, who is *Shri Guchi Parang*, the accused appellant and he will be able to identify the accused and his companion who had assaulted him. That apart, the accused appellant has not been named in the F.I.R. and there is no identification by the victim in accordance with the law.

He further submits that since the victim has not explained the non-disclosure of the name of the accused appellant before the Police, mentioning of the name of the accused appellant for the first time in the Court by the victim/PW-2, cannot be relied upon. Mr. Taffo further submits that the accused appellant all along during the trial has not violated any conditions imposed by the Court while on bail. Hetherefore, submits that on these grounds, the conviction and sentence *prima-facie* is not sustainable and as such, prays that the sentence handed over by the learned Sessions Judge, Bomdila, West Kameng, against the accused appellant be suspended and he may be released on bail.

9. In support of his submissions, Mr. Taffo, learned counsel for the applicant has placed reliance on the judgment of the Hon'ble Supreme Court in ***the case of Dana Yadav vs. the State of Bihar***, reported in **(2002) 7 SCC 295**.

10. On the other hand, Ms. L. Hage, learned Additional Public Prosecutor submits that since the PW-2, i.e. the victim, has clearly mentioned the name of the accused appellant in his deposition before the Court and the injuries sustained by him has been corroborated by the evidence of the doctor, the appeal would not succeed. She submits that the PW-2 had deposed that he will be able to identify the accused appellant, and although there is no identification, the defence has miserably failed to demolish the evidence. Therefore, the deposition of the victim has to be accepted as truthful and credible. She further submits that the evidence of PW-2 is duly corroborated by the deposition of PWs-1,3 & 4.

11. I have considered the submissions of the learned counsels for the parties and also perused the record.

12. It is needless to observed that while considering the application under Section 389 of the Cr.P.C, the Court is required to find out as to whether, *prima facie*, judgment and order of conviction and sentence is unsustainable. The application for suspension of sentence and bail under Section 389 Cr.P.C. is a relief and not a matter of right. At the same time, at the stage of consideration of the application, no meticulous examination of the evidence is required.

13. On the perusal of the record, it is seen that the accused appellant has not been named in the F.I.R. and his name has not been mentioned in the statement under Section 161 Cr.P.C. before the Police. It is only before the Court, the PW 2/victim has mentioned the name of the accused appellant, wherein, he had deposed that he will be able to identify the accused appellant. Thereafter, there is no identification of the accused appellant as required under the provisions of law. The reliance of such deposition without there being any corroboration as well as without following the requirement of law may be fatal to the case of the prosecution.

14. The Hon'ble Supreme Court has held that identification parades are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable despatch for the purpose of enabling the witnesses to identify either the properties which are subject matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits. It is further held that failure to hold test identification parade does not make the evidence of identification in court inadmissible rather the same is very much admissible in law, but ordinarily identification of an

accused by a witness for the first time in court should not form basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law. Ordinarily, if an accused is not named in the first Information report, his identification by witnesses in court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above.

15. Having considered the above, this Court is of the *prima facie* view that the conviction and the sentence dated 21.02.2024, passed by the learned Sessions Judge, Bomdila, West Kameng, under sections 325/367 IPC, against the accused/appellant, namely, *Shri Guchi Parang* seems unsustainable.

16. It is submitted by the learned counsel for the applicant that the accused appellant is a student aged about 27 (Twenty-Seven) years and all along during the proceedings he has not violated any terms and conditions imposed by the Court while on bail.

17. On careful consideration of the materials on record, I am of the view that the sentence handed over to the accused/appellant, namely, *Shri Guchi Parang* by the learned Sessions Judge, Bomdila in Bomdila Sessions Case No. 12/2019 vide judgment and order dated 21.02.2024, whereby, the accused/appellant, namely, *Shri Guchi Parang*, has been convicted and sentenced to 3 (three) years rigorous imprisonment with a fine of Rs. 5000/- (Rupees Five Thousand) under

Section 325 IPC and rigorous imprisonment for 4 (four) years with fine of Rs. 5,000/- (Rupees Five Thousand) under Section 367 IPC and in default of payment of fines, to undergo further simple imprisonment of 3 (three) months, is liable to be suspended, pending final disposal of the connected Cr. A. No. 10/2024.

18. Accordingly, the sentence dated 21.02.2024, passed by the learned Sessions Judge, Bomdila, West Kamengin Bomdila Sessions Case No. 12/2019 under sections 325/367 IPC, against the accused/appellant, namely, *Shri Guchi Parangis* hereby suspended.

19. Consequently, the accused appellant, namely, *Shri Guchi Parang* shall be released on bail on his personal bond.

20. It is made clear that any observations touching the merits of the appeal are only for the purpose of considering the present application and shall not be construed as an opinion in the connected appeal.

21. The interlocutory application stands allowed and disposed of.

JUDGE

Comparing Assistant