

GAHC010074232021



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

Case No. : Crl.A./131/2021

SULTAN MAMUD
S/O LATE SALU MIAH, R/O VILL-SHANTIPUR, MANKACHAR, P.S.-
MANKACHAR, DIST-SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:RIPON MIAH
S/O MD. MEHER ALOM
R/O NO. 2 PUBER GAON
KAZIPARA
P.O.-MANKACHAR
DIST-SOUTH SALMARA MANKACHAR
PIN-

3:RASHIDUL ISLAM
S/O LATE ASAN SK.
R/O VILL-TAKURANBARI
P.O.-MANKACHAR
DIST-SOUTH SALMARA MANKACHAR
PIN

Advocate for the Petitioner : MR. S K GOSWAMI, MR. R SHARMA

Advocate for the Respondent : PP, ASSAM, MR A ISLAM (R-3), MS. S G BARUAH (R-2), MR. B BORGOHAIN (R-2), MR. S NEOG (R-2)

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

29-08-2024

Heard Mr. S K Goswami, learned counsel for the appellant and Ms. S Jahan, learned Additional Public Prosecutor, Assam for the State respondent No. 1. Also heard Ms. S G Baruah, learned counsel for the respondent No. 2 and Mr. A Islam, learned counsel for the respondent No. 3.

2. Aggrieved with the judgment dated 03.03.2021 passed by the learned Assistant Sessions Judge, Dhubri in Sessions Case No. 249/2018 acquitting the respondent Nos. 2 & 3 from the charge of Section 366 IPC, the appellant, i.e., the informant of the case on 09.04.2021 preferred this appeal under Section 378 read with Section 372 of the CrPC.

3. Notice in this appeal was issued on 23.08.2011.

4. Mr. A Islam, learned counsel for the respondent No. 3, one of the acquitted accused, raised the issue of jurisdiction of this appeal, stating that the High Court is not the appellate forum pertaining to the impugned judgment as it was passed by the learned Assistant Sessions Judge, Dhubri.

5. Stating the provisions of Section 374 (3) read with Section 372 of the CrPC, Mr. A Islam, learned counsel submitted that the appellant should have preferred this appeal before the concerned Sessions Court and not the High Court. In support of his argument Mr. Islam placed reliance on a judgment of a Co-ordinate Bench of this Court passed in the case of *Akhtar Mirza -Vs- State of Assam* reported in 2019 (2) GLT 1085.

6. Ms. S Jahan, learned Additional Public Prosecutor, Assam on the other hand, placed a decision of a Division Bench of this Court dated 29.08.2016 passed in Criminal Reference No. 01/2016 (*In Re. -Vs- State of Assam*).

7. On the other hand, Mr. S K Goswami, learned counsel for the appellant relied on a judgment of another Co-ordinate Bench of this Court passed in the case of *Md. Abdul Kadir &*

Others. -Vs- State of Tripura, decided on 21.01.2003.

8. Judgments cited by the parties have been considered. Before proceeding with the merits of this appeal, the issue of its jurisdiction before the High Court, as been raised by the respondent No. 3, has to be decided first.

9. Chapter XXIX of the CrPC, containing Sections 372 to 394 relates to Appeals.

10. Section 372 of CrPC stipulates as follows –

“372. No appeal to lie unless otherwise provided.—No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and as such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court”.

11. With regard to appeals from conviction provisions are prescribed under Section 374 CrPC, which reads as follows –

“374. Appeals from convictions.” 

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial; may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2) any person, –

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate,

may appeal to the Court of Session.

(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code, the appeal shall be disposed of within a period of six months from the date of filing such appeal.

12. As per the provision of Section 374(3)(a) any person convicted by an Assistant

Sessions Judge may appeal to the Court of Session.

13. Reading the proviso to Section 372 CrPC, it can be seen that the victim, as defined in the CrPC, has the right to prefer an appeal against any order passed by the Court either acquitting the accused or convict the accused for a lesser punishment and also against imposing inadequate compensation to the accused, where such appeal shall lie to the Court to which an appeal originally lies against the order of conviction of such Court. As noted above, Section 374 CrPC relates to appeals from conviction.

14. Reading the Proviso to Section 372 with Section 374(3)(a) of the CrPC, it can be seen that against a judgment and/or order of acquittal or conviction or giving lesser punishment passed by the Court of Assistant Sessions Judge, it can be seen that appeal shall lie to the Court of Session.

15. In the case in hand the impugned judgment dated 03.03.2021 acquitting the accused persons, namely, respondent Nos. 2 & 3 herein under Section 366 IPC, herein was passed by the learned Assistant Sessions Judge, Dhubri in Sessions Case No. 249/2018, therefore, the appeal shall lie to the Court of concerned Sessions Judge.

16. From the impugned judgment dated 03.03.2021 passed by learned Assistant Sessions Judge, Dhubri in Sessions Case No. 249/2018, it is seen that the incident occurred on 05.04.2018 within the jurisdiction of the Mankachar Police Station and accordingly, Mankachar Police Station Case No. 221/2018 was registered. After filing the Charge-Sheet in said Mankachar PS Case, it was committed by the learned Judicial Magistrate First Class, Hatsingimari to the Court of learned Sessions Judge, Dhubri.

17. Earlier the territorial jurisdiction of Mankachar and Hatsingimari was within the Dhubri Judicial District. After bifurcation of South Salmara-Mankachar District from erstwhile Dhubri District in the year 2016 and on establishment of South Salmara-Mankachar Judicial District at Hatsingimari since November, 2021, presently, the jurisdiction of Mankachar and Hatsingimari lies with the Court of District and Sessions Judge, South Salmara-Mankachar at Hatsingimari.

18. It is seen that the appellant/informant filed this appeal on 09.04.2021 being aggrieved with the impugned judgment dated 03.03.2021 passed by learned Assistant Sessions Judge,

Dhubri in Sessions Case No. 249/2018 within time including the time taken in obtaining the certified copy of the said judgment dated 03.03.2021, but in a wrong forum, i.e., before the High Court instead of preferring the appeal before the concerned Sessions Judge.

19. In view of the above, this appeal be transmitted to the Court of learned Sessions Judge, South Salmara-Mankachar at Hatsingimari for its disposal.

20. The appellant, the state respondent No. 1 and the respondent Nos. 2 and 3, through their respective counsels, are directed to appear before the learned Sessions Judge, South Salmara-Mankachar at Hatsingimari on 1st (First) October, 2024 at 10:30. Since this order has been passed in presence of the learned counsel for the appellant as well as the additional public prosecutor for the state respondent No.1 and the learned counsels for respondent Nos. 2 and 3, i.e., the two acquitted accused; therefore, the learned Sessions Judge, South Salmara-Mankachar, Hatsingimari need not issue any fresh notice to the appellant, the state respondent No. 1 and the respondent Nos. 2 & 3 for their appearance in the appeal.

21. Registry shall forthwith transmit this appeal together with the records of Sessions Case No. 249/2018 that was called for by the Court on 23.08.2021 from the Court of learned Assistant Sessions Judge, Dhubri along with a copy of this order to the Court of learned Sessions Judge, South Salmara-Mankachar at Hatsingimari.

JUDGE

Comparing Assistant