

GAHC010122012012



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

Case No. : Crl.Rev.P./429/2012

DIPEN NATH
S/O SRI NARENDRA NATH, R/O VILL- BARKAPLA UNDER SARTHEBARI P.S.
IN THE DIST. OF BARPETA, ASSAM,

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.S M MOLLAH, MRT BIDYUT BIKASH,MR.R MEDHI,MR.K NATH,MR.H DAS

Advocate for the Respondent : , MR. B SHARMA(ADDL.PP, ASSAM),,,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

Date of hearing : **28.05.2024**
Date of Judgment/Order : **31.07.2024**

JUDGMENT & ORDER (CAV)

Heard Mr. H. Das, learned counsel for the revision petitioner. Also heard

Mr. B. Sharma, Additional Public Prosecutor for the State/respondent.

2. The revision petitioner herein challenges the conviction and sentence vide impugned Judgment and order dated 02/06/2012 passed by the learned Additional Sessions Judge (FTC) Barpeta, affirming the Judgment of the trial court in Criminal Appeal No. 02/2011, which has been preferred against the Judgment and order dated 20/12/2010, passed by the learned Assistant Sessions Judge, Barpeta, whereby the revision petitioner was convicted u/s 341/324/506 IPC, and sentenced to undergo simple imprisonment for one month and to pay a fine of Rs. 500/- in default further SI for one month u/s 341 IPC. The revision petitioner was also sentenced to undergo SI for two years and to pay a fine of Rs. 2,000/- in default SI for four months u/s 324 IPC and u/s 506 IPC to undergo SI for one year and to pay a fine of Rs. 1,000/- in default SI for three months. All the sentences were directed to run concurrently.

3. The allegation against the petitioner is that an FIR has been lodged by the informant stating *inter-alia* that on 25/08/2004 at around 7 PM, his cousin brother Labaram Nath and his elder brother Arun Nath went to Balbari chowk for marketing. While they were busy in marketing, suddenly the accused petitioner came to the spot and attacked Labaram Nath with a dao causing injury on his person. When his brother Arun Nath tried to resist the accused/petitioner then the accused gave two dao blows on his forehead and as a result of which he also sustained injuries on his person. After the incident, both the injured were taken to hospital for their treatment.

4. On receipt of the complaint, a case was registered vide Sarthebari PS case No. 64/04 u/ss 341/326/307/34 IPC and investigation was initiated. During investigation, the I.O visited the place of occurrence, recorded the statement of the witnesses, prepared the sketch map of the place of occurrence and collected

injury reports of the victims. As the investigating officer in spite of vigorous search failed to nab the accused/petitioner, he could not be arrested and as such, charge sheet has been laid against the accused/petitioner u/ss 341/323/324/307 IPC showing him as absconder.

5. During trial, on appearance of the accused/petitioner before the trial court, charge was framed under Sections 341/324/307/506 of IPC which was read over and explained to the accused/petitioner to which he pleaded not guilty and claimed to be tried. The prosecution examined 12 witnesses and exhibited some documents. The accused denied the incriminating circumstances when examined u/s 313 Cr.P.C and projected a defence that the injured probably sustained injuries in a scuffle or in a fall. The accused did not adduce any evidence in defence.

6. On an appreciation of the evidence, the trial court found the accused guilty u/ss 341/324/506 IPC and convicted and sentenced as aforesaid. Aggrieved by the Judgment of conviction dated 20/12/2010, the accused approached the Court of Sessions, Barpeta vide Criminal Appeal No. 02/2011. In appeal, the learned Additional Sessions Judge, (FTC) Barpeta, confirmed the conviction and sentence passed by the trial court. Now the accused is before this court in revision challenging the legality and propriety of the conviction and sentence.

7. Learned counsel for the revision petitioner has argued that the learned trial court has misread the evidence on record and thereby misconstrued the facts in this case and thereby arrived at a wrong finding to convict the accused/ revision petitioner and subsequently on appeal affirmed the Judgment passed by the trial court.

8. It is further submitted that the alleged occurrence took place in the market

area. According to the prosecution witnesses, more than two hundred people were present at the relevant time. In spite of such circumstances not even a single independent witness was examined by the prosecution to bring home the real fact of the case. It is further submitted that the trial court has arrived at the impugned Judgment only on the basis of the deposition of highly interested witnesses for which the impugned Judgment of conviction and sentence is liable to be set aside.

9. According to the learned counsel for the petitioner, the ocular evidence did not support the medical evidence regarding the weapon used for the purpose of committing the alleged crime or the injuries sustained by the injured persons. Hence, learned counsel for the revision petitioner prays that the accused deserves to be acquitted on benefit of doubt.

10. In support of his submission, learned counsel for the petitioner has placed reliance on the following case laws –

a. (2012) 5 GLT 659 (Jyoti Pran Kumar vs. State of Assam)

b. (2022) 0 Supreme(Gau) 928 (Mongal Singh @ Mangal Singh vs. State of Assam)

11. On the other hand, learned Additional P.P. has contended that the Judgments of the trial court and the first appellate court are in accordance with law and no interference is warranted. The Revision deserves to be dismissed.

12. After perusing the records and after going through the impugned Judgments, this court finds that the findings given by the trial court and the first appellate court are correct as per evidence as well as material available on record. In the instant case, there are two injured persons PW-2 and PW-4. Both PW-2 and PW-4 categorically stated that the accused/petitioner inflicted injury

with a dao towards PW-2 causing injury on his neck, wrist joint and forehead. When PW-4 resisted him, he was also assaulted by the revision petitioner and as a result of which, he also sustained injuries on his person. Other witnesses also supported the fact by stating that the accused first attacked PW-2 with a dao for which he sustained injuries in his forehead, backside of his neck and head. When PW-4 resisted, the accused also assaulted him causing injury on his forehead.

13. The medical officer PW-6, who examined PW-2 has stated that on examination of PW-2, he found cut injuries on his left upper neck, right elbow and right forearm. Doctor opined that the nature of injuries were simple, caused by blunt object. Another doctor PW-11, who examined PW-4 also supported the injury sustained by PW-4 i.e., one cut injury on his forehead. Injury was simple caused by sharp cutting weapon.

14. Apparently, on perusal of the evidence of the witnesses particularly both the injured and the medical officers, this court does not find any perversity or irregularity in the Judgment of the trial court or the appellate court. Learned counsel for the revision petitioner has preferred the present revision on several grounds but during the course of arguments, his only prayer is that imprisonment of the revision petitioner be reduced to the period already undergone as the accused has suffered forty four (44) days in custody during the trial as well as during the pendency of the case.

15. In the revision petition, this court is not to re-appreciate the evidence like the court of appeal. This court is only to see whether the findings given by the trial court and the first appellate court are perverse or against the law or whether the said courts have misread any evidence or have not considered any material evidence. Nothing has been pointed out as to which material evidence

has been misread or which material evidence has not been considered by the trial court or the first appellate court.

16. The Hon'ble Apex Court in the case of ***Duli Chand vs. Delhi Administration***, reported in (1975) 4 SCC 649, has held that the jurisdiction of the High court in criminal revision is severely resisted and it cannot embark upon a re-appreciation of evidence. The said Judgment has been followed by the Apex court in the case of ***State of Maharashtra vs. Jagmohan Singh, Kuldeep Singh Anand*** and others, reported in (2004) 7 SCC 659.

17. In view of the aforesaid legal proposition as well as the background of the case, this court is of the opinion that the conviction u/ss 341/324/506 IPC is liable to be confirmed in Revision petition also.

18. Now coming to the question of sentence, the alleged incident occurred on 25/08/2004, after that twenty years have elapsed since the date of incident. The accused was at his prime age of 26/27 years on the date of incident. Though the court imposed a jail sentence of imprisonment for 2 years, the appellate court also affirmed the same. The injury sustained by PW-2 and PW-4 and the consequence of it cannot be ignored by the court in choosing the right sentence. In the present circumstances, on a consideration of the various aspects, including the long lapse of years and also the circumstances of the accused, I am of the view that the minimum sentence in lieu of section 354 (4) Cr.PC and a direction to pay an adequate amount of compensation to the victim will do justice to both sides.

19. In the result, the conviction against the revision petitioner u/ss 341/324 and 506 IPC is affirmed. However the sentence will stand modified as follows –

- a. The jail sentence to undergo SI for one month u/s 341 IPC is

reduced to pay a fine of Rs. 500/- in default SI for one month.

b. The sentence to undergo SI for two years u/s 324 IPC is reduced to one month and fine of Rs. 2000/- will remain as same.

c. Sentence of imprisonment for one year u/s 506 IPC is reduced to fine of Rs. 1000/-.

d. In view of modification in sentences as above, the revision petitioner/ accused is also directed to pay a compensation u/s 357 (4) Cr.PC amounting to Rs. 20,000/- to PW2 and PW4 on equal share basis, i.e., Rs. 10,000/- each. In case of default in making compensation, the accused will have to undergo a default sentence of rigorous imprisonment for 6 months. Accused/ petitioner is also directed to pay the fine amount as above before the trial court apart from compensation.

e. The revision petitioner will surrender before the trial court within three weeks from this date to serve out the modified sentence and to make payment of the compensation, on failure of which, steps shall be taken by the trial court to enforce the modified sentence and realize the amount of compensation or enforce the default sentence. Needless to say, the period which the petitioner detained in custody shall be set off from the period of imprisonment imposed on him.

20. Accordingly, the revision petition is disposed of.

Trial court record be returned back.

JUDGE

Comparing Assistant