

GAHC010130532013



2024:GAU-AS:12791

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

Case No. : Crl.Rev.P./259/2013

AFTAB UDDIN BARLASKAR @ APTAI and 4 ORS
S/O LT. AROB ALI BARLASKAR

2: ZAKIR HUSSAIN BARLASKAR

3: ALTAF HUSSAIN BARLASKAR @ ALTA HUSSAIN

4: ANOWAR HUSSAIN BARLASKAR @ ANOR HUSSAIN
S/O AFTAB UDDIN BARLASKAR

5: FARUK UDDIN LASKAR @ FARUK AHMED
S/O ABDUL ALI LASKAR ALL ARE OF R/O VILL- RATANPUR PART-I
P.S. and DIST. HAILAKANDI
ASSAM

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MRH I CHOUDHURY, MR. S ALAM, MR. I H LASKAR, MR. P K DEKA

Advocate for the Respondent : , , PP, ASSAM

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. IH Laskar, Advocate.

For the Respondents : Mr. KK Das, Addl. PP, Assam

Date of Hearing : 13.12.2024

Date of Judgement : 13.12.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. IH Laskar, learned counsel for the petitioners. Also heard Mr. KK Das, learned Additional Public Prosecutor, Assam.
2. The present application is filed under Section 401 and Section 397 of the Code of Criminal Procedure, 1973 assailing judgment and order dated 12.03.2008 passed by the learned Chief Judicial Magistrate, Hailakandi in GR Case No. 377/2005 convicting the petitioners under Section 323 IPC with the aid of Section 34 IPC and sentencing them to undergo Rigorous Imprisonment for 3 months and to pay a fine of Rs. 250/- each. The further challenge is the impugned appellate judgment dated 27.05.2013 passed by the learned Sessions Judge, Hailakandi in Criminal Appeal No. 5/2008 preferred by the present petitioners, whereby the judgment and order dated 12.03.2008 passed by the learned Chief Judicial Magistrate, Hailakandi was affirmed.
3. During the pendency of this revision petition, the petitioner No. 1 died on 26.03.2014 and the petitioner No. 5 died in the year 2016. Such fact has not been disputed by the learned Additional Public Prosecutor. Accordingly, the proceeding stands abated against the petitioner Nos. 1 and 5.
4. The prosecution was launched on the basis of an information lodged by one, Basir Uddin Borbhuiya, the father of the victim, inter-alia, alleging that on the

instruction of petitioner No. 1, petitioner Nos. 2 and 5 chased and caught hold of his son and dealt blow to his entire body with lathi and accused Nos. 4 and 5 caused grievous injury on the head of his son for the reason that the buffaloes belonging to the informant broke the embankment of the accused/ petitioners.

5. On the basis of the aforesaid FIR, Hailakandi PS case No. 181/2004 under Section 147/341/325 IPC was registered. After completion of the investigation, the Investigating Officer submitted charge-sheet under Section 147/341/323 IPC and sent them for trial. On receipt of charge-sheet, summons were issued to the accused petitioners and accordingly the petitioners appeared before the learned trial court and the learned trial court under its order dated 20.10.2006 explained the offences under Section 147/341/323 IPC, which the accused petitioners pleaded not guilty and claimed to be tried.
6. To bring home the charges, the prosecution side examined as many as six witnesses including the informant, victim, I/O, M/O and one projected eye witness as PW3. The defence side, however, did not adduce any witness though their statements under Section 313 Cr.P.C. were recorded.
7. After elaborately dealing with the material and appreciating the prosecution evidence, the learned trial court convicted and sentenced the petitioners as recorded hereinabove. Being aggrieved, the petitioners preferred Criminal Appeal No. 5/2008, however, the same was also dismissed by the impugned judgment dated 27.05.2013. It was also concluded that the sentence awarded by the learned Chief Judicial Magistrate, Hailakandi cannot be said to be harsh or excessive in the given facts of the case. Being aggrieved, the present petition is filed.
8. Mr. Laskar, learned counsel for the petitioners submits that there are material contradiction in the evidence of the PW1 and PW3 and the evidence of PW5 and

therefore, the injured victim is not trust worthy. In the aforesaid backdrop, without independent corroboration, the petitioners could not have been convicted. The learned counsel further contends that the medical evidence also did not corroborate the nature of injury as depicted by PW5. Therefore, both the judgments are vitiated by perversity.

9. It is further contended by the learned counsel for the petitioners that the PW3, which is projected to be an eye witness is interested witness and therefore testimonies of such witness could not have been relied by the learned courts below. Referring to the evidence of PW6 (I/O), the learned counsel further submits that the PW6 in his deposition clearly stated that on his visit to place of occurrence, he neither found any water in the canal whereas the victim deposed that dispute took place in connection with breaking of the canal made for catching fish and therefore, on this count also the testimony of PW1 is not at all trust worthy. According to the learned counsel, all the PWs i.e. PW2 and PW3 are interested witnesses being the family members of the victim. Therefore, heavy reliance ought not to have been placed upon these witnesses.
10. Per contra, Mr. KK Das, learned Additional Public Prosecutor, Assam submits that the prosecution through the evidence of victim has been able to establish not only the attack but also the injury inasmuch as the medical officer (PW4) has duly corroborated the injury. The evidence of the PW3 who was an eye witness has also remained unshaken inasmuch as only for the reason that he is a relative of the accused petitioners, his testimony cannot be discarded straightway, more particularly when during the cross-examination, the defence had reaffirmed his presence in the place of occurrence and he witnessed the attack. Therefore, in view of the concurrent findings of guilt, this court may not exercise its revisional jurisdiction to upset such finding, concludes learned Additional Public Prosecutor.
11. I have given anxious consideration to the submission made by the learned

counsel for the parties.

12. The object of revisional power of this Court under Section 397 Cr.P.C. is to set right a patent defect or an error of jurisdiction or law. Such power can be exercised where the decision under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. It is equally well settled that a revisional jurisdiction of High Court should not be exercised in a routine manner. The Hon'ble Apex Court in **Chandra Babu vs State** reported in **2015 (8) SCC 774** held that normally revisional jurisdiction should be exercised in a question of law however, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. The Supreme Court went to say that the power is required to be exercised so that justice is done and there is no abuse of power by the Court.
13. Since the learned counsel for the petitioners has basically argued on the perversity of the judgment, this court has duly perused the material available on record.
14. From the evidence of the prosecution witnesses, it is seen that PW3, PW4 and PW5 are the star witnesses for the prosecution. PW5 is the injured victim and PW3 is projected to be an eye witness.
15. From the evidence recorded before the learned courts below, the following fact has been established by the prosecution beyond reasonable doubt:
 - (I) From the evidence of PW3, it was established that on 10.06.2005, the victim got laceral injuries in his head.
 - (II) Such fact is further established and corroborated through the testimony of PW5 and PW 4. Such testimony not only remained unshaken but also

was reaffirmed during cross-examination.

(III) Through the injured witness's (PW5) evidence as well as through the evidence of eye witness (PW3) the assault upon the injured by the accused remained unshaken and the injured described the role of each of the accused in commission of the offence. Such testimony was corroborated by the evidence of PW4. Such testimonies not only remained unshaken but were also reaffirmed during the cross-examination of both the witnesses i.e. PW5 and PW3.

(IV) From the evidences of the aforesaid two witnesses i.e. injured victim and the eye witness, the place of commission of offence was also identified and established beyond reasonable doubt.

16. Therefore, some discrepancies in the statement of PW6 (I/O), who allegedly visited the place of occurrence subsequent cannot be said to be a material discrepancies creating doubt about place of occurrence.
17. It is correct that PW3 was close a close relative of the victim, however, taking note of the consistency and nature of evidence of these witnesses, his evidence cannot be lightly brush aside only for the reason that he is an interested witness and he is a relative of the victim inasmuch as the suggestion of the defence in this regard has been denied by this witness.
18. The Hon'ble Apex Court in the case of State of **Madhya Pradesh Vs. Mansing** reported in **(2003) 10 SCC 414** had held that the evidence of an injured eye witness has great evidentiary value and unless compounding reason exists their statements are not to be discarded lightly.
19. This court after closure scrutiny of the testimony of the injured victim do not find anything to discard his testimony and to disbelieve the same inasmuch as the

nature of injury described by him and by the eye witness has been corroborated by the evidence of the Doctor.

20. In view of the aforesaid, this court finds no illegality or error not to say any patent illegality in the judgments passed by the learned courts below. Both the learned courts below have duly appreciated the material evidence and based their conclusion on such evidence and after proper appreciation of such evidence. Therefore, this court is not inclined to interfere with the conviction passed by the learned trial court below and affirmed by the learned appellate court.
21. At this stage, the learned counsel for the petitioner submits that the petitioners had suffered prolong litigations since 2005 i.e. for almost 20 years and the nature of injury is also simple and they had been sentenced for three months of imprisonment only and considering the litigational history, more particularly, the admitted fact that there as some civil disputes amongst the two families inasmuch there was no pre-meditation but it was sudden fight due to the dispute as regards the breaking of the embankment, this court may reduce the sentence only to the fine.
22. This court is in agreement with such submission of the learned counsel for the petitioners. It is true that the petitioners had suffered prolong litigations since 2005 i.e. for almost 20 years and the nature of injury is also simple and they had been sentenced for three months of imprisonment only. Considering the litigational history, more particularly, the admitted fact that there as some civil disputes amongst the two families and that there was no pre-meditation but it was sudden fight due to the dispute as regards the breaking of the embankment, this court is of the view that ends of justice would meet if the sentence is reduced only to fine while upholding the conviction. Accordingly, the accused persons are to pay a fine of Rs. 250/- each and in default to undergo Simple Imprisonment of one month.

23. Accordingly, the criminal revision petition stands disposed of and allowed in the aforesaid terms.

JUDGE

Comparing Assistant