

GAHC010181952012



2024:GAU-AS:12810

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

Case No. : Crl.Rev.P./38/2012

PRANAB CHUTIA @ BINOD @ DOCTOR,
S/O LT. TILSWAR CHUTIA, R/O VILL- BOGINODI P.S. BOGINADI, DIST.
NORTH LAKHIMPUR, ASSAM,

VERSUS

STATE OF ASSAM

Advocate for the Petitioner : MR.D F A AHMED, MR. M DUTTA (AMICUS CURIAE),MR.J
LASKAR,MS.M DEB,MR.B BANERJEE,MR.A DEY

Advocate for the Respondent : ,,,PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 17-12-2024

- 1.** Heard Mr. M. Dutta, learned Amicus Curiae for the accused/petitioner and Mr. B. Sarma, learned Additional Public Prosecutor, Assam for the sole respondent/opposite party.
- 2.** The present criminal revision petition under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 is filed assailing the judgment and conviction dated 03.12.2011 passed by the learned Additional Sessions Judge, (FTC), Lakhimpur,

North Lakhimpur in Sessions Case No. 77(NL)2011 arising out of GR Case No. 1563/2009 registered under Sections 307/387/506/34 IPC, wherein convicted the accused/petitioner under Section 323 IPC and sentenced him to undergo Rigorous Imprisonment for 6 (six) months.

3. The prosecution story in nutshell is that on 01.12.2009 at about 08:30 pm, the accused/petitioner Pranab Chutia came to Balijan Oil Depot in order to fill petrol in his vehicle. He purchased petrol of Rs. 500/- but when one Kamlesh Kr. Patel, i.e., the victim, a worker of the Oil Depot asked him to pay money for purchasing of petrol, the accused/petitioner caught his hand and drove his vehicle to some distance. Thereafter, while Kamlesh Kr. Patel raised hue and cry, the accused/petitioner removed his hand and kamlesh Kr. Patel fell down on the ground. As a result, Kamlesh Kr. Patel got grievous injuries on his person.

4. Thereafter, one Ramesh Patel, Manager of aforesaid Oil Depot lodged an FIR before the Boginadi Police Station and accordingly, Boginadi P.S. Case No. 179/2009 under Sections 447/307/387/506/34 IPC corresponding to GR Case No. 1563/2009 was registered. After completion of the investigation, charge sheet under Sections 307/387/506/34 IPC was submitted. As the offences were triable by the Sessions Judge, the learned committal Court committed the case to the learned Court of Sessions Judge, Lakhimpur, North Lakhimpur Subsequently, charges under Sections 307/387/506/34 IPC were framed and were explained to the accused persons to which they pleaded not guilty and claimed to be tried.

5. The prosecution had examined as many as 9 (nine) witnesses. Out of 9 (nine) witnesses, 6 (six) prosecution witnesses were cross-examined. The defence did not cross-examine remaining 3 (three) witnesses. The statements of the accused persons were recorded under Section 313 CrPC and the defence did not adduce any evidence.

6. Ramesh Patel i.e., the informant was examined as PW-1. One nearby shop owner to the petrol pump, namely, Padma Bhuyan was examined as PW-2. One Jagan

Kr. Patel was examined as PW-3, Mahananda Nath was examined as PW-4. However, PW-4 did not support the case of the prosecution and accordingly, he was declared as hostile witness. PW-5 Bijoy Chetia denied knowing anything about the incident and PW-6 Ratul Handique, who on the date of the incident hired the vehicle of the accused Pranab Chutia stated nothing supporting to the case of the prosecution and PW-7 was declared as hostile witness and was cross-examined by the prosecution. PW- 8 & PW-9 are two Investigating Officers who conducted the investigation in the different stage.

7. After considering and taking note of the prosecution witnesses, the learned Trial Court concluded that the prosecution had miserably failed to prove the offences punishable under Sections 307/387/506/34 IPC against the accused persons beyond all reasonable doubt. However, it was concluded that the prosecution had successfully proved the offence punishable under Section 323 IPC against the accused persons beyond all reasonable doubt. Accordingly, the conviction and sentence was passed.

8. This Court is surprised to note that the prosecution did not examine the injured victim as its witness. The prosecution had neither exhibited any injury report nor examined any medical officer. The Investigating Officer had also not thrown any light on the factum, whether the accused was taken to hospital and whether he was treated or not and why the medical officer, if any, who examined the accused had not been examined as a prosecution witness.

9. The prosecution projected PW-1 and PW-3 as eye- witnesses. Though these witnesses supported the case of the prosecution, however, the victim who is the vital witness to support the fact of injury was not even examined, not to say about producing any corroborative evidence as regards injuries sustained by the victim. In the considered opinion of this Court, non-examination of such vital witness is fatal to the prosecution case.

10. In view of such glaring lacuna, this Court is of the considered opinion that the accused/petitioner could not have been convicted under Section 323 IPC, more

particularly, when the injury was not even established except bald statement of the informant that the victim got injured. In view of the aforesaid, this Court is of the opinion that the impugned judgment and conviction dated 03.12.2011 passed by the learned Additional Sessions Judge, FTC, Lakhimpur, North Lakhimpur in Sessions Case No. 77(NL)2011 arising out of GR Case No. 1563/2009 is vitiated by patent illegality inasmuch as the settled proposition of law that it is the prosecution, who is to establish its case beyond any reasonable doubt is ignored.

11. Accordingly, this criminal revision petition stands allowed by quashing and setting aside the impugned judgment and conviction dated 03.12.2011 as noted herein above.

12. Accordingly, the petitioner is hereby acquitted from the charge of offence under Section 323 IPC. Bail bond stands discharged.

13. Registry to communicate this order to the learned Trial Court below so that the petitioner can be intimated as regards passing of this order inasmuch as no Advocate has represented him and it is not possible for the learned Amicus Curiae to do the aforesaid exercise. While parting with the record, this Court puts on record its appreciation as regards able assistance rendered by Mr. M. Dutta, learned Amicus Curiae. Accordingly, Registry shall ensure that Mr. M. Dutta, learned Amicus Curiae be paid the legal fee, as payable to a Legal Aid Counsel as per the existing norms fixed by the Legal Services Authority.

14. LCR be returned back.

JUDGE

Comparing Assistant