

GAHC010234302013



2024:GAU-AS:12183

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

Case No. : Crl.Rev.P./245/2013

DIPAK MEDHI
S/O SHRI MADHAB MEDHI R/O VILL- DUMURIYA UNDER MOUZA SARIH,
P.S. PATACHARKUCHI, DIST. BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR G ALAM, MR.H ROHMAN,MR.P D NAIR,MS.S GOGOI

Advocate for the Respondent : PP, ASSAM, ,,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT AND ORDER (ORAL)

Date : 03-12-2024

1. The present revision petition under Section 397 read with Sections 401 and 482 of the Code of Criminal Procedure, 1973, is filed assailing the judgment and order dated 25.08.2008 passed by the learned Sub-Divisional Judicial Magistrate (SDJM in short) (M), Pathsala in PRC Case No. 17/2008 convicting and sentencing the petitioner to undergo rigorous imprisonment (RI) for 1 (one) month and to pay a fine of Rs. 1000/- and in

default of payment of fine, to further undergo simple imprisonment (SI) for 1 (one) month under Section 323 IPC and to undergo RI for 15 (fifteen) days and to pay a fine of Rs. 500/- and in default of payment of fine, to undergo SI for 15 (fifteen) days under Section 447 IPC. The further challenge is against the judgment and order dated 11.01.2013 passed by the learned Additional Sessions Judge (FTC), Barpeta in Criminal Appeal No. 17(A)/2008 whereby the conviction and sentence passed by the learned SDJM (M), Pathsala on 25.08.2008 was upheld.

2. Mr. Alam, learned counsel for the petitioner submits that both the judgments are vitiated by perversity inasmuch as the learned Courts below had failed to consider that the defence had been able to establish through its cross-examination that there are material contradiction in the statements of the victims as well as eye-witnesses and also of the Investigating Officer resulting in uncontroverted conclusion that the witnesses were not at all trustworthy and the prosecution had failed to prove its case beyond reasonable doubt. Therefore, according to the learned counsel for the petitioner that it is a fit case to exercise the power of this Court under Sections 397/401/482 CrPC though both the learned Courts below had concurrently held the petitioner guilty.

3. Par contra, Mr. Borthakur, learned Additional Public Prosecutor, Assam submits that the both the Courts below had concurrently found the petitioner guilty on the basis of the proper appreciation of the evidence on record. Therefore, such judgments cannot be said to have patent defect or any jurisdictional error. Therefore, this Court may not entertain the present revision petition and the same is liable to be dismissed.

4. Law is well settled that the object of revisional power of this Court under Sections 397/401 CrPC is to set right a patent defect or an error of jurisdiction or of law. Such power can be exercised where the decisions under challenge are grossly erroneous, there is non-compliance of provisions of law, the finding recorded is either based on no evidence or the material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. It is equally well settled that the revisional jurisdiction of a High Court should not be exercised in a routine manner.

5. The Hon'ble Apex Court in the case of **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 should be exercised in the class or the classes of cases resulting in a perverse finding. The Hon'ble Apex 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.

6. In the backdrop of the aforesaid settled propositions of law, now let this Court consider the present case, more particularly in the backdrop of the arguments that both the decisions of the learned Courts below are vitiated by perversity.

7. The prosecution was initiated on the basis of an FIR. A bare reading of the FIR discloses as following:-

a) On the date of the incident, i.e., on 08.01.2008 at around 03:00 pm, when the informant/victim, namely, Nirupama Medhi was standing at her courtyard, the accused Dipak Medhi along with one Monoranjana Medhi and Himani Medhi entered into her courtyard and hit her with a cricket bat on her head which was held by Dipak Medhi.

b) It is further alleged that as a result of such hit, the informant fell down on the ground and the accused Dipak Medhi started hitting her with a cricket bat and that while she raised hue and cry, the other victim, i.e., her daughter, namely, Rima Medhi saved her from death. According to the informant, another accused name of whom is not mentioned in the FIR, pushed her daughter Rima Medhi and choked her neck.

c) It is also alleged that the informant was severely injured by assault of the accused person.

8. During the trial, she was examined as PW-1 and the other victim, Rima Medhi was examined as PW-2. The husband of the informant, namely, Troloikya Medhi was projected by the prosecution as an eye-witness to the incident and was examined as PW-3. One Dinanath Kalita (PW-6) was also projected by the prosecution as an eye-witness to the incident and was examined as PW-6.

9. The testimony of the prosecution witnesses projected their versions in the

following manner:-

(i) During the trial, the informant/victim as PW-1 and PW- 2, who was also a victim stated: the accused Monoranjana Medhi choked PW-1's daughter in her neck and started hitting her with a stick.

(ii) On the other hand, the other victim, i.e., PW-2, Rima Medhi in her deposition stated that Monoranjana Medhi pushed her mother who is the informant of the case and she fell down.

(iii) In the FIR, it is the story depicted that the informant was beaten up first by Dipak Medhi and hearing her hue and cry, Rima Medhi came to save her and then Rima Medhi was pushed by another accused Monoranjana Medhi.

(iv) So far relating to the role of the accused Dipak Medhi, the informant deposed that he beat her with a cricket bat and she fell down on the ground. Similar is the stand so far depicted by the daughter of the informant that said Dipak Medhi hit her mother with a cricket bat and that one Dina Nath Kalita, PW-6 snatched the aforesaid cricket bat .

(v) None of the victims, i.e., the informant and her daughter deposed that Troloikya Medhi, PW-3 i.e., the husband of PW-1 and the father of PW-2 was present at the place of occurrence.

(vi) During the cross-examination, PW-1 was contradicted and she admitted that she had not stated before the Investigating Officer that at the time when the accused Monoranjana choked her daughter's neck and started hitting her with a stick.

(vii) PW-2, the other victim in her cross-examination had stated that Dipak Medhi verbally assaulted her mother.

(viii) The projected eye-witness i.e., Troloikya Medhi (PW-3) in his evidence in chief deposed that as he was informed by someone that a quarrel took place at his house and therefore, he rushed to the place of occurrence in his bicycle and as he reached the place of the occurrence, he saw one Dina Nath Kalita (PW-6) was snatching a cricket bat from

the hand of the accused Dipak Medhi. However, during the cross-examination, he deposed that he had not seen the incident.

(ix) The other witness projected eye-witness, namely, Dina Nath Kalita (PW-6) did not support the prosecution case and became hostile and the prosecution cross-examined him and he remained firm during the cross-examination that he did not witness the scene. He further denied the suggestion of the prosecution that he stated before the police that he had seen the incident.

(x) The Investigating Officer, namely, Arun Kr. Baruah was also examined as PW-8. The said Investigating Officer in his cross examination candidly admitted that the informant did not state before him as regards the accused Monoranjan Medhi held her daughter's neck and that he started hitting her daughter with a stick etc. The Investigating Officer on being confronted during the cross-examination had admitted that the informant did not state before him that Dipak Medhi hit the informant with a cricket bat on her head. He further deposed that the informant did not state before him that when she was about to rise, Dipak Medhi hit her with a cricket bat on her back.

10. Thus, the defence has duly contradicted the Investigating Officer as well as PW-1 & PW-2 by following the procedure under Section 145 of the Indian Evidence Act, 1872 specifically bringing to the notice of the witnesses, the statements that they had made under Section 161 CrPC before the Investigating Officer.

11. In view of the aforesaid material evidence, the co-accused Monoranjan Medhi who was alleged to have started the quarrel alleged to have held the neck of the daughter of the informant was acquitted. However, the present petitioner was convicted for commission of offence under Section 323 IPC and was sentenced to pay Rs. 5,00/- on the basis of the same material. This Court, in view of the main contradiction and improvement in versions of PW-1 and PW-2, should not have inspired confidence that they are injured victims.

12. From the material available on record, the credential and trustworthiness of PW-1 and PW-2 remain doubtful, more particularly, when they had improved their story

depicted in the FIR and materially improved the prosecution version. Not only that, the contradictions were duly proved by the defence. The contradiction can be treated to be a material contradiction, more particularly, when the depositions of the two injured victims' testimonies are all together different from each other as regards the role of individual accused in inflicting the injury and initiation of the fight.

13. Law is well settled that a person cannot be convicted on presumption or surmise, it is the prosecution who is to prove the case beyond any reasonable doubt. Thus the prosecution in this case has been able to prove of having a quarrel between the convicted accused Dipak Medhi, the acquitted accused Monoranjana Medhi and the victims, however, there was a doubt as regards who initiated the fight and inflicted the injury. The testimony recorded herein above, created a serious doubt as regards the nature of attack, the mode of weapon as well as how the quarrel started and whether it is the informant who was attacked first or it is the daughter of the informant who was attacked first and by whom.

14. Another aspect of the matter is that none of the witnesses had stated anything as regards the presence of Troloikya Medhi PW-3, who reached the place of occurrence immediately and it is the vital omission on the part of the witnesses.

15. In view of the aforesaid, this Court is of the opinion that the judgment of conviction and sentence had been passed by the learned Courts below ignoring the material evidence such as proof of contradiction of the witnesses and the learned Courts below straightway had given undue trustworthiness to these alleged injured witnesses without corroboration and even after the material contradictions being proved by the defence.

16. Accordingly, the present criminal revision petition stands allowed by setting aside the judgment and order dated 25.08.2008 passed by the learned Sub-Divisional Judicial Magistrate (SDJM in short) (M), Pathsala in PRC Case No. 17/2008 as well as the judgment and order dated 11.01.2013 passed by the learned Additional Sessions Judge (FTC), Barpeta in Criminal Appeal No. 17(A)/2008.

17. Accordingly, the present criminal revision petition stands disposed of.

18. LCR be returned back.

JUDGE

Comparing Assistant