GAHC010106002011

2026:GAU-AS:16300

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

Case No. : Crl.Rev.P./1/2011

LAKHI BARUAH
S/O SRI BHUMIDHAR BARUAH R/O VILL- BORPUKHURI P.O. and P.S. KALAIGAON, DIST. UDALGURI, BTAD, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.L RAHMAN, MR. J H SAIKIA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 02.11.2026

None appears for the petitioner on call.

2. Mr. P. Borthakur, learned Additional Public Prosecutor, is present for the respondent.

3. The present criminal revision petition has been instituted assailing the Judgment & Order dated 23.11.2010, passed by the learned Additional Sessions Judge (FTC), Darrang, Mangaldai, in Criminal Appeal No.4 (D-1)/2010, upholding the Judgment & Order dated 07.01.2010, passed by the learned Chief Judicial Magistrate, Darrang, Mangaldai, in G.R. Case No.143/03, convicting the petitioner, herein, under Section 324 IPC, and sentencing him to undergo Simple Imprisonment for 01 (one) year, along with a fine of Rs.500/- (Rupees Five Hundred), in default, to undergo Simple Imprisonment for 05 (five) days.

4. The prosecution case in brief is that one Debiram Bora, lodged an FIR before Kalaigaon Police Station on 13.02.2003, alleging, *inter alia*, that on 12.02.2003 at around 4.00 p.m, the petitioner, herein, had a heated argument with Tarak Bora, father of the informant, near the public pond of village Borpukhuri. At the said time, hearing the commotion, the informant and his mother had come to the said spot and had tried to pacify the petitioner as well as Tarak Bora. It is further alleged that the petitioner, herein, had assaulted the father of the informant with a 'dau' causing injury on his leg. It was also alleged that the mother of informant while trying to save her husband, was also assaulted on her neck by the

petitioner, herein, with a 'dau' as a result of which she had also sustained grievous injuries.

4.1. On receipt of the said FIR, the same was registered as Kalaigaon Police Station Case No.14/03 under Section 326 IPC.

4.2. On conclusion of the investigation, police had laid charge-sheet against the petitioner, herein, under Section 324 IPC. The learned Trial Court, thereafter framed a charge under Section 324 IPC and the same on being read over and explained to the petitioner, herein, the petitioner pleaded not guilty and claimed to be tried and accordingly, trial ensued.

4.3. During the trial, the prosecution examined 08 (eight) witnesses including the informant and the Investigating Officer. The statement of the petitioner was recorded under Section 313 CrPC, wherein, the petitioner had denied the circumstances put to him by the learned Trial Court.

4.4. On conclusion of the Trial, the Trial Court by appreciating the evidences coming on record, proceeded to convict the petitioner, herein, under Section 324 IPC and sentenced him to undergo Rigorous Imprisonment for 03 (three) months and to pay a fine of Rs.500 (Rupees Five Hundred) in default to undergo Simple Imprisonment for 05 (five) days vide Judgment & Order dated 23.08.2006.

4.5. The petitioner, herein, being aggrieved by his conviction by the learned Trial Court, assailed the Judgment & Order dated 23.08.2006, by way of filing a Criminal Appeal being Criminal Appeal No.28(D-4)/2006 before the Hon'ble Session Judge, Darrang, Mangaldai.

4.6. The learned Appellate Court, vide Judgment & Order dated 19.05.2007, set aside the Judgment & Order dated 23.08.2006 and remanded the matter back to the Trial Court with direction to re-examine

the petitioner under Section 313 CrPC. The Trial Court was directed to put all incriminating material on record to the petitioner and thereafter, dispose of the case by delivering a fresh judgment. Accordingly, the learned Trial Court re-examined the petitioner under Section 313 of the CrPC and, vide Judgment & Order dated 07.01.2010 passed in G.R. Case No. 143/2003, convicted him under Section 324 IPC and sentenced him as noticed, hereinabove. Being aggrieved by the said Judgment & Order dated 07.01.2010, the petitioner assailed the same before the learned Appellate Court by way of instituting Criminal Appeal No.4 (D-1)/2010. Upon consideration, the said appeal was dismissed by the learned Appellate Court vide Judgment & Order dated 23.11.2010.

Being aggrieved the petitioner has instituted the present criminal revision petition.

5. I have heard the learned counsel for the parties and also perused the materials available on record.

6. This Court at the outset would examine the conclusion reached by the learned Trial Court vide the Judgment & Order dated 07.01.2010. The learned Trial Court upon appreciating the evidences coming on record had framed the following point for determination.

> "**Whether the accused person on 12-02-2003 at about 4.00 p.m., voluntarily caused hurt to Tarak Bora and Pritibala Bora @ Pitikan Bora with a sharp weapon"**

7. The learned Trial Court thereafter considered the evidences coming on record in the matter and with regard to the issue framed, had drawn the following conclusion;

> "20. The statements of the witnesses reveal that there is cogent evidence that P.W.1 Tarak Bora and his wife pritikan Bora @ pritibala Bora were injured by the accused with a 'dao'. P.W.1 has stated that when he was having an altercation with the

accused, his wife came and tried to pull him away. The fact that the accused struck his wife with a 'dao and injured her in the neck is corroborated by the victim as because she has also stated that the accused struck her in the neck, she has also stated about the injury in her hand.

21. Debiram Bora (P.W.3), another eye witness and a victim also states about the involvement of the accused in the offence. He and his parents were injured by the accused with the 'dao'. According to him, Juran Bora was attacked by the accused but when the sister of the accused intervened it was she who got hurt. Juran Bora (P.W.4) himself has also confirmed the injuries that he had seen the cut injury in the neck of the lady. He has further stated that the accused threw the 'dao' at him. P.W.5 saw the cut injuries in the leg of Tarak Bora and also other cut injuries in the body of the wife of Tarak Bora and the sister of the accused.

22. The defence has raised the argument that the prosecution case has lost its sharpness as because only relatives of the complainant have been examined and they are merely interested witnesses.

23. This argument of the defence is not at all impressive as because relative witness cannot be characterized as " interested".

A witness who is a relative of the deceased or victim of a crime cannot be characterised as "interested". The term "interested" postulates that the witness has some direct or indirect interest in having the accused somehow or other convicted due to animus or foe some other oblique motive.

Evidence of relative witness however, must be scrutinized carefully. If on such scrutiny. his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the sole testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.

24. The other limb of argument placed by the learned Defence Counsel is that the accused had filed a counter case in respect of the same incident and as such, it is of prime importance as to who is the aggressor and whether the offence was committed

in exercise of right of private defence.

25. The evidence is that the defence had taken the plea that the complainant and the other members of the family had tried to assault the accused person. The suggestions in this respect have all been denied by the witnesses. However, there is evidence that the accused had lodged a case being G.R. Case No. 142/03 against the present complainant side.

26. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section 97 deals with the subject-matter of right of private defence. The plea of right comprises the body or property (i) of the person exercising the right or (ii) of any other person; and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass and attempts at such offences in relation to property. Section 99 lays down the limits of the right of private defence. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99. To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Sections 100 und 101, IPC define the limit and extent of right of private defence.

27. Sections 102 and 105 IPC deal with commencement and continuance of the right of private defence of body and property respectively. The right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat to commit the offence, although the offence may not have been committed but not until that there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. In Jai Dev v. State of punjab (AIR 1963 SC 612), it was observed that as soon as the cause for reasonable

apprehension disappears and the threat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence.

28. The above position was highlighted in Rizan and Another vs. State of Chhattisgarh, through the Chief Secretary, Govt. of Chhattisgarh, Raipur, (2003 (2) SCC 661), and Sucha Singh and Anr. v. State of Punjab (2003) (7)SCC 643).

29. Merely because there was a quarrel between the parties and the accused person sustained some injury, does not confer a right of private defence on the accused. This right of private defence cannot extend to causing injuries, that could be fatal in nature. Though this right cannot be measured in golden scales, it has to be established that the accused was in great apprehension about his safety that retaliation to the extent done was absolutely necessary. No evidence, much less cogent and credible was adduced in this regard.

30. The only aggression on the part of the P.W.1 was that he had rebuked the accused about his dressing up when he was washing himself in the pond. The accused thereafter carried it to the extent that he used a 'dao to cause injuries like ---

(1) Laceration measuring 5 cm. x 3 c.m. X 2 c.m. over the left lateral aspect of the thigh to Tarak Bora; and

(2) Laceration over the four fingers except thumb, left anterior aspect;

(2) Laceration measuring 6 c.m. X 3 c.m. X skin depth over the left lateral aspect of neck to Pritibala.

31. The description of the injuries, opinion of the doctor corroborate the evidence of prosecution witnesses. The statement of P.W.2 that she recovered after about 2 months has not been challenged by the defence even in the cross-examination.

32. The submission advanced on behalf of the accused is not at all convincing. The events as stated in the ejahar have been established and there is no reason as to why the evidence of the witnesses should be discarded.

33. After considering the entire aspects and evidence on record, it is held that the prosecution has been able to prove its case under Section 324 of the Indian Penal Code against the accused person beyond all reasonable doubt. Therefore, accused Lakhi Barua is convicted under Section 324 of the Indian penal Code.”

8. On convicting the petitioner under Section 324 IPC, the learned Trial Court proceeded to sentence the petitioner, herein, as follows;

> "Accordingly, accused Lakhi Barua is sentenced to undergo S. I. for 1 (one) year and to pay a fine of Rs.500/-(Rupees five hundred) under Section 324 of the Indian penal Code and in default of payment of fine S.I. for 5 (five) days. Bail bonds stand cancelled. The period of detention in jail hajot is to be set off from this imprisonment."

9. This Court has meticulously perused the conclusion drawn by the learned Trial Court in the light of the evidences coming on record. On a consideration of the same, this Court finds that the conclusions drawn by the learned Trial Court would not mandate any interference. The overwhelming evidences coming on record, establishes the commission of offence under Section 324 IPC against the petitioner, herein.

10. This Court finds that the conclusions drawn by the Trial Court has been so drawn on a due and proper appreciation of the materials coming on record in the Trial and accordingly, conviction of the petitioner, herein, under Section 324 IPC would not mandate any interference.

11. Having drawn the said conclusion, this Court would examine the Judgment & Order dated 23.11.2010, passed by the learned Appellate Court. Before proceeding to examine the said Judgment, this Court would notice that before the Appellate Court the petitioner, herein, had only raised an issue with regard to the jurisdiction of the learned Trial Court to pass a fresh judgment after it had earlier passed Judgment in the matter. It is also to be noticed that the petitioner, herein, was initially vide Judgment & Order dated 23.08.2006 convicted under Section 324 IPC and was sentenced to undergo Rigorous Imprisonment for 03 (three) months and pay a fine of Rs.500 (Rupees Five Hundred) and in default to undergo

Simple Imprisonment for 05 (five) days by the learned Trial Court. The said decision was assailed by the petitioner, herein, before the Appellate Court and the Appellate Court vide Judgment & Order dated 19.05.2007, had set aside the Judgment & Order dated 23.08.2006, passed by the learned Trial Court and remanded the matter to the learned Trial Court for a fresh examination of the petitioner, herein, under Section 313 CrPC and thereafter to pass a fresh Judgment & Order in the matter. Thereafter, the learned Trial Court had examined the petitioner under Section 313 CrPC and had proceeded to pass the fresh Judgment & Order 07.01.2010 in the matter.

12. The learned Appellate Court in its judgment dated 23.11.2010 on appreciating the said aspect of the matter had drawn the following conclusions;

> "17. On perusal of the materials on record and the impugned judgment, it is an admitted position that the case was finally disposed of by the Id. trial court by the judgment dared 23.8.06. But on being preferred appeal, Id. appellate court vide judgment dated 19.7.07 set aside the earlier judgment and remitted the case with direction to re-examine the accused U/S 313 Cr.P.C. putting all the incriminating materials and to dispose the case by delivering a fresh judgment. Admittedly the court is the same court of Id. CJM, Darrang, Mangaldai. But when the earlier judgment was set aside by the Id. appellate court the previous judgment become nonest/ non-existent. That being so, it cannot be said that Id. trial court altered it own earlier judgment. Ld. counsel has not uttered any word against the present impugned judgment about the legality, illegality in delivering the impugned judgment. Meaning thereby he has no grievance against the present impugned judgment.
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> 18. Ld. Addl. P.P. appearing for the prosecution has also submitted that when the earlier judgment was set aside by the appellate court the subsequent judgment cannot be said to alter the judgment on material particular. Hence, Section 362 Cr.P.C. is not attracted.

19. I am also of the same opinion and agreed to the submission of Id. Addl. P.P.

20. In view of the above, the appeal has got no merit and accordingly, the appeal stands rejected."

13. This Court has perused the conclusions drawn by the learned Appellate Court in the matter and finds that the same is on an appreciation of the factual matrix involved in the present case. The earlier Judgment & Order dated 23.08.2006 passed by the learned Trial Court having been interfered with, the subsequent Judgment dated 07.01.2010 being a fresh Judgment passed in pursuance to the directions passed in this connection by the learned Appellate Court, the same cannot be held to be a Judgment passed by the learned Trial Court altering its earlier Judgment. Accordingly, the said issue raised by the petitioner would not mandate an acceptance.

14. In view of the above discussion, this Court is of the view that the said Judgment & Order dated 23.11.2010 passed by the learned Appellate Court would not mandate any interference and accordingly, the conviction of the petitioner, herein, under Section 324 IPC stands affirmed.

15. Having drawn the said conclusion, this Court notices that the learned Trial Court while proceeding to sentence the petitioner, had noticed the provision of Probation of Offenders Act, 1958. However, the benefit thereunder was not extended to the petitioner, herein, only by noticing the nature of offence committed by the petitioner, herein.

16. The Hon'ble Supreme Court in the case of **Sitaram Paswan Vs. State of Bihar** reported in **2005 (13) SCC 110**, has laid down the principles for exercise of the discretionary power under the Act of 1958 and also the consideration required to be made in this connection. The Hon'ble Supreme Court has laid down that while exercising the discretionary power under the Act of 1958, the Courts are to consider the

circumstance of the case, the nature of the offence and the character of the offender. It was also laid down that while considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact, which the offence had on the victim.

17. It is to be noted that it is a settled position of law that such power can be exercised even by the Appellate Court or revisional Court or by the Hon'ble Supreme Court while hearing the appeal under Article 136 of the Constitution of India. Further, the long lapse of time occasioning with effect from the date of commission of the offence would also be a relevant factor which is to be appreciated.

18. In view of the said settled position of law, this Court is of the considered view that the learned Trial Court while proceeding to sentence the petitioner, herein, had not taken into consideration the provision of Probation of Offenders Act, 1958 in its proper perspective.

19. It is permissible for a Court not to extend the benefit of Probation of Offenders Act, 1958 to an accused, however, a due and proper consideration thereof, is required to be extended.

20. In view of the above discussion, considering the settled position of law, this Court is of the considered view that this is a fit case where the provision of Probation of Offenders Act, 1958 should be extended to the petitioner, herein, by this Court.

21. Accordingly, for the reasons recorded, hereinabove, while the conviction of the petitioner is upheld, the petitioner, herein, be given the benefit under the provision of Probation of Offenders Act, 1958 and consequently, the sentence of imprisonment as imposed upon the petitioner by the learned Trial Court stands modified and it is provided that instead of sending the petitioner to jail, he should be extended the benefit

of Section 4 of Probation of Offenders Act, 1958. However, the sentence for payment of fine as imposed by the learned Trial Court is not interfered with.

22. In view of the conclusions reached by this Court, it is directed that the petitioner, herein, shall file 2 (two) sureties to the tune of Rs.10,000/ (Rupee ten Thousand), along with personal bond before the learned Trial Court i.e. learned Chief Judicial Magistrate, Darrang, Mangaldai, Assam, and undertake to the effect that the petitioner shall maintain peace and good behavior through the period of 01 (one) year from the date of filing of the personal bond. The aforesaid bond be filed by the petitioner within a period of 1 (one) month from the date of this judgment. The petitioner shall also deposit the fine amount as ordered by the Trial Court.

23. With the above observations and directions, the present Criminal Revision Petition stands disposed of.

24. Send down the records of the case to the Trial Court along with a copy of this order for information and necessary action.

JUDGE

Comparing Assistant