



GAHC010002892012

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

Case No. : CrL.A./9/2012

HARISH CHANDRA NATH
S/O LATE HARESWAR NATH, R/O VILL. DIAJIJURI, P.S. KOKRAJHAR, DIST.
KOKRAJHAR BTC, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.M CHIRING

Advocate for the Respondent :

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. DCC Phukan, Advocate
Mr. D Gogoi, Amicus

For the Respondents : Mr. D Das, learned Additional PP, Assam

Date of Hearing : 04.08.2023

Date of Judgement : 04.08.2023



JUDGEMENT & ORDER (ORAL)

1. Heard Mr. DCC Phukan, the learned counsel for the appellant and Mr. D Gogoi, learned amicus curiae. Also heard Mr. D Das, the learned Additional P.P., Assam, appearing for the State.
2. This appeal is preferred against the judgment dated 19.12.2011 passed by the learned Additional Sessions Judge (FTC), Kokrajhar in Sessions Case No. 08/2008. By the aforesaid judgment the appellant was convicted under Section 307/ 323 IPC and was sentenced to suffer rigorous imprisonment for 5 years and a fine of Rs. 5,000/- in default of which rigorous imprisonment for 5 months under Section 307 IPC and to pay fine of Rs. 300/- only in default of which simple imprisonment for one month under Section 323 IPC.
3. The prosecution was launched on the basis of an FIR filed by the victim, inter alia alleging that the accused/ appellant assaulted the victim by fist and kick blows causing swelling injury to her. It was also alleged that her legs were tied up with rope by the accused with the help of some other persons and thereafter police arrived. She specifically mentioned involvement of the present appellant Harish Chandra Nath in commission of the offence. On the basis of the aforesaid investigation, the investigating

officer filed charge-sheet under Section 307/323 IPC against the petitioner and three others persons including the husband of the victim. Thereafter, the committal court committed the matter to the learned Sessions Judge, Kokrajhar, who in turn entrusted the trial to the learned Additional Sessions Judge, Kokrajhar.

4. Charges were framed against the appellants, Anil Nath, one Purnima Nath and one Dipti Nath under Section 307/323 IPC. The appellant and others denied their guilt and accordingly trial proceeded.
5. To bring home the charges, the prosecution examined as many as 7 witnesses and exhibited certain documents including medical report and statement of the victim under Section 164 Cr.P.C.
6. The PW1 is a fellow villager, PW2, is Gaon Burah of the village, PW3 claims to be an eye witness, PW4 is the victim, PW5 is the maternal aunt of the victim, PW6 is the doctor, who examined the victim and submitted medical report and PW7 is the investigating officer.
7. Before going into details to the deposition of other witnesses this court is of the considered opinion that the star witnesses of the prosecution are PW3, the eye witness, PW4, the victim and PW6, the doctor.

- 8.** The evidence of PW 2 i.e. the village head , in the considered opinion of this court is also relevant for determination of the present litigation though the deposition of PW1 and PW5, who are not eye witnesses are not so relevant for determination of the present case.
- 9.** The victim, PW4 deposed before the court in the similar line that of the narration made in the FIR. However, during her examination under Section 164 Cr.P.C. she added an allegation beyond the FIR that the appellant Harish Chandra Nath poured kerosene on her body and tried to burn her. Similar stand was taken by her in her deposition before the court. She specifically deposed during her evidence that Harish Chandra Nath, Mitra Mohan Nath, Purnima Nath and Dipti Nath started assaulting her. Purnima Nath held her hair and put her to the courtyard where she was assaulted. She made a specific statement that that Harish Nath gave blows on her eyes and face. During her cross-examination, her statement that Harish Chandra Nath gave blows on her eyes and face and Harish Nath, Mitra Mohan Nath, Purnima Nath and Dipti Nath started assaulting her remained unshaken.
- 10.** The PW 3, who claims to be an eye witness also deposed that Harish Chandra Nath assaulted Purnima, poured kerosene on her body and tried

to set her on fire by using matchbox. According to him, he advised the accused that they should not assault the victim on road and if she was guilty they should lodge a complaint in the Club and with the village head. During his cross-examination, he deposed that Harish Chandra Nath had beaten her with a bamboo stick. He denied the suggestion that he was having illicit relation with the victim. He also denied the suggestion that Harish Chandra Nath did not assault Purnima.

- 11.** PW2, the village head, during his evidence-in-chief before the court deposed that at about 8 p.m. Harish Chandra Nath, Mitra Mohan Nath etc. came to his house taking along with them the victim. He deposed that as he was the village head they approached him to lodge a complaint. He further deposed that the incident took place in connection with return of victim to her matrimonial home after two years of marriage. He refused to hold the '*bishar*' so late in the night and advised them that '*bishar*' should be held on the following date. During cross-examination, he deposed that Anil and member of his family never assaulted Purnima physically and mentally. He further deposed that neither any assault was made nor any torture was inflicted in his presence on the day of occurrence.

- 12.** PW 6, Doctor during his examination-in-chief deposed that on 30.07.2005

while he was working at R.N.B. Civil Hospital, Kokrajhar as Medical & Health Officer at around 12 midnight he examined the victim, who was brought by one Sri H.S. Paul, S.I. of Kokrajhar PS in connection with Kokrajhar PS M.R. No. 239/2005 dated 30.07.2005. On examination, he found the following injuries on body of the victim:

- i. Blackening of left eye,
- ii. Tenderness over left upper eyelid,
- iii. Tenderness over nose,
- iv. Tenderness and swelling over upper lip and
- v. All the injuries are of duration less than 06 hours.

He opined that injuries were simple and caused by blunt weapon and same are less than 06 hours old. He exhibited and proved the medical report as Ext.2 and his signature as Ext. 2(1). During his cross-examination, he deposed that he has not written the history of the injury and also stated that the injury mentioned by him in his report are not in the nature of attempting to murder.

13. The PW7, S.I., Narayan Ch. Biswas submitted that he entered into the

investigation at a later point of time and the initial investigation was done by one Himangsu Shekhar Paul, who in the meantime expired and after his expiry the PW7 was entrusted to the investigation. He proved and stated that statements were recorded under Section 161 Cr.P.C. as well as statement of the victim under Section 164 Cr.P.C.

- 14.** PW1 deposed that the incident took place about 8 p.m. on the day of occurrence while he was at his residence. He was informed by his nephew that the victim had come back to her matrimonial home. Then he went to the place and saw lots of people including the victim. Accordingly, he advised that the victim be taken to the village head as she had returned to the family after four years. He deposed that when he reached the house of the village head in the meantime police reached there and therefrom police took the victim along with them.
- 15.** PW 5's evidence is having no relevance as she deposed in examination-in-chief that she know nothing about the incident except the fact that her niece i.e. the victim got married to accused Anil one year prior to incident. She deposed that about 6 months after the marriage her niece gave birth to a girl child.

- 16.** The learned counsel for the appellant submits that there is no iota of evidence to convict the appellant under Section 307 IPC though an allegation was made that an attempt to kill her was made by setting her on fire and kerosene was poured on her body. However, such evidence is not corroborated by any of the witnesses inasmuch as the investigating authority has not seized the wearing apparel of the victim to at least establish that kerosene was poured. He further argues that the evidence of the Doctor also does not reflect any burn injury. In that view of the matter, a case under Section 307 IPC is not made out and therefore the learned trial court has committed serious error of law as well as fact in convicting the accused under Section 307 IPC.
- 17.** The learned counsel further contends that there is also no evidence of inflicting injury upon the victim by the appellant herein. Therefore, a doubt has been created whether the appellant had inflicted any injury upon the victim inasmuch as the village head who is the independent witness has in his cross-examination deposed that he has not seen any assault by the accused.
- 18.** Per contra, Mr. D Das, learned Additional Public Prosecutor appearing for the State submits that the victim who is an injured witness clearly deposed

that the appellant Harish Nath poured kerosene on the body of the victim and attempted to burn her and such consistent statement not only remained unshaken but the PW3, who is an eye witness also collaborated such evidence. Therefore, failure on the part of the investigating authority in not seizing the wearing apparel and not sending the same to the FSL shall have no effect upon the present case. Thus, the prosecution has been able to establish beyond any reasonable doubt that there was an attempt to murder the victim by the accused appellant.

19. I have given anxious consideration to the submissions advanced by the learned counsel for the parties and also perused the material available on record.

20. From the evidence as discussed hereinabove, this court can concluded that:

A. The PW1, who is the co-villager, the PW3, who is an eye witness and the PW4, the victim clearly established that a quarrel took place on the fateful day in the matrimonial house of the victim.

B. It is also established beyond any reasonable doubt that the victim was taken to the place of the PW2, the Village head.

C. It is further established that the victim was rescued by the police

from the residence of the village head.

D. The evidence of PW 2 so far relating to inflicting blow injury on the face and eye of the victim as deposed by the victim remained unshaken. The defence has failed to bring anything out of the victim to dislodge such evidence.

F. The medical report of the doctor corroborated that injuries were inflicted in the eye and face and the injury as discussed hereinabove are in the same one as deposed by the PW1.

G. Thus, it is established beyond reasonable doubt from the evidence of the PW4 and PW6 that the victim got injured by use of blunt weapon in her eyes and face and such injuries are simple in nature.

H. Therefore, the question remains who inflicted the injury. The evidence of PW4, the victim regarding giving blow by Harish remained unshaken as discussed hereinabove. Such fact has also been corroborated and ascertained by PW3, who is the eye witness. The other witnesses except PW5 established that Harish Nath was present not only at the place of occurrence but he also took the

victim along with others to the residence of village head.

I. Therefore, on the basis of the aforesaid evidence, this court is of unhesitant view that the injuries were inflicted by none other than the appellant. It is also clear from the unshaken medical evidence that the injury is simple in nature and therefore, this court cannot find fault with the conviction and sentence awarded upon the appellant under Section 323 IPC. Accordingly, such conviction is upheld.

- 21.** Now coming to the conviction under Section 307 IPC, this court is of the considered opinion that though an allegation has been made that kerosene was poured and an attempt to burn her was made, however, in absence of the seizure of the wearing apparel of the victim and in absence of the seizure of the matchbox and in absence of any such injury, this court cannot conclusively hold only on the basis of the evidence of the victim that kerosene was poured and an attempt was made to burn her out.
- 22.** Accordingly, a doubt still remains whether there was an attempt to murder to the victim by pouring kerosene and by putting fire on her body. Therefore, the appellant is entitled for the benefit of doubt in the present case.



23. In view of the aforesaid, the conviction under Section 307 IPC awarded by the learned trial court is set aside and quashed.

24. With the aforesaid, the present appeal stands partly allowed. Registry to communicate the order to the learned trial court below so as to execute the conviction that has been upheld by this court. While parting with this record, this court puts on record the able assistance rendered by the learned Amicus Curiae, Mr. D Gogoi. Registry to pay him remuneration as per existing norm. LCR be returned back.

JUDGE

Comparing Assistant