
(2009) 07 GAU CK 0005

Gauhati High Court

Case No: Criminal Appeal No. 22 of 2003

Akoni Tamuli

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: July 23, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 307, 326, 34, 341

Citation: (2010) 4 GLR 740 : (2009) 5 GLT 351

Hon'ble Judges: P.K. Musahary, J

Bench: Single Bench

Advocate: B.D. Konwar, N. Barman and H.P. Phukhan, for the Appellant; B. Gogoi, Addl. P.P., for the Respondent

Judgement

P.K. Musahary, J.

Heard Mr. B.D. Konwar, learned Counsel for the appellant and also Mr. B. Gogoi, learned Additional Public Prosecutor, Assam.

2. This appeal has been preferred against the judgment dated 20.12.2002 passed in Sessions Case No. 62(VH)/2001 by the learned Session Judge, Dhemaji convicting the appellant u/s 307 of the IPC, and sentence him to undergo three years rigorous imprisonment and a fine of Rs. 1,000 and in default, further rigorous imprisonment for another three months. For the purpose of disposal of this appeal, a brief facts of the cases are stated below:

On 23.6.2001 at about 9:00 a.m., the informant's (PW1) brother-in-law Ramani Chutia (PW3) was coming back from his elder sister's house and when he reached the gate of the accused-appellant Akoni Tamuli, the latter inflicted injuries on various parts of his body by means of "Khukri" with attempt to cause death. FIR was lodged by PW1 on the basis of which the Gogamukh P.S. Case No. 86/01 under Sections 326/307/34, IPC, was

registered. The injured PW3 was medically examined by Gogamukh Public Health Centre and he was referred to North Lakhimpur Civil Hospital. From there he was again referred to Gauhati Medical College Hospital for further treatment. The police seized a ganji during the investigation. After completion of the investigation, the police submitted charge sheet against the accused-appellant u/s 341/326/307, IPC. The case being exclusively triable by the Court of Sessions, on commitment of the case, charge was framed u/s 307, IPC, against the accused-appellant to which he pleaded not guilty and claimed to be tried. The prosecution examined in all, eight witnesses including the Medical Officer (PW7) and the, I.O., (PW8). The defence did not examine any witness. The statement of the appellant was recorded u/s 313 Cr.PC, in which he pleaded innocence. After the trial, the learned Session Judge Dhemaji passed impugned judgment and order convicting and sentencing the accused as mentioned above.

3. Mr. B.D. Konwar, learned Counsel for the appellant submits that the accused-appellant had no intention to kill Ramini Chutia and there is no medical evidence to the effect that the injury received by the injured person would have caused death. According to the evidence of the Medical Officer (PW7), out of four injuries, two are simple in nature and two are grievous. In cross-examination, the Doctor opined that a sufficiently heavy weapon was used with force for causing injuries Nos. 1 and 3 and light weapon was used to cause injury 2 and 4.

4. Mr. Konwar, learned Counsel for the appellant further submits that there is no eye witness to the alleged occurrence, PW3, Ramini Chutia (injured person), in cross-examination clearly stated that he did not see any other persons at the time of occurrence and as such there was no eye witness. He also submits that in the cross-examination of PW3, he categorically stated that he (PW3) was not in talking terms with the accused-appellant as he filed a case against him earlier. This indicates that there was some rivalry between the accused-appellant and the injured person.

5. Mr. B. Gogoi, learned Additional Public Prosecutor submits that there may not be any eye witness but evidence of PW3 and the Medical Officer (PW7) are enough to come to a conclusion that the accused-appellant did indeed cause both simple and grievous injuries to Ramini Chutia (PW3) and on the basis of the evidence on record, the conviction and sentence awarded by the learned Sessions Judge cannot be reversed or set aside. The evidence on record is that the injured person was initially admitted in the Gogamukh Public Health Centre and then in the North Lakhimpur Civil Hospital and ultimately at Gauhati Medical College Hospital. The medical treatment that had been pursued for recovery of the injured person clearly shows that he would have died due to the aforesaid two grievous injuries received by him had the said treatment was not given to him.

6. On perusal of the record, it is found that the Investigating Officer, while investigating the matter, seized only blood-stained ganji which was worn by the injured person. The Investigating Officer did not seize any weapon from the place of occurrence although as per the Doctor's evidence, the accused-appellant used blunt weapon in causing the injury

to PW3. No attempt was made by the Investigating Officer to recover the weapon(s) from the place of occurrence. There is nothing to show that the Investigating Officer tried to recover the crime weapon by examining the local people. There is nothing on record that the bloodstained ganji seized by the Investigating Officer was sent to Forensic Science Laboratory. The Investigating Officer did not try to find out as to whether any quarrel or hot altercation took place, before the accused-appellant struck the blows on the injured person. The investigation was not directed towards this aspect of the matter by examining the local people in and around the place of occurrence. There is no suggestion by the defence to the fact that sudden quarrel or altercation took place between the accused appellant and the injured person. It can be gathered from the evidence of PW3, that there was enmity inasmuch as he had no talking terms with the appellant due to the fact that the accused-appellant filed a case against him on earlier occasions. Although there is no evidence of sudden altercation between them, it is an admitted position that PW3 received at least two grievous injuries as stated earlier. The defence tried/attempted to show that the aforesaid injuries were caused due to some accident and not due to any assault committed by the accused-appellant but it failed in the cross-examination to destroy evidence of PW3 who categorically stated that "on reaching the gate of the accused, (Akoni Tumuli) he gave a blow on my head from behind. I look back and saw Akani giving the blow. With what weapon he gave the strike I did not see, I fell down....

7. The defence having failed to demolish the aforesaid evidence, it is not possible to take a different view that the injuries were not caused by the assault committed by the accused-appellant or that it was caused due to the fall, etc. This leads to clear conclusion that the accused-appellant assaulted PW3 and the learned trial court rightly convicted him u/s 307, IPC, which, in my considered view cannot be interfered with.

8. It is now to be considered whether the sentence awarded by the learned trial court could be upheld. Going through the evidence of PW3, as discussed earlier, it is apparent that there was enmity between the accused-appellant and PW3. Both of them belong to the same village. Both the accused-appellant and PW3 are young men. It is not unthinkable that due to some old rivalry, these two young men might have suddenly picked up quarrel on the spot which was not seen by anybody but the accused-appellant out of anger struck the blows. There is nothing in the evidence that the accused-appellant struck the aforesaid blow with intention to take his life.

9. In the FIR it has been mentioned that the "khukri" was used in assaulting PW3 but the evidence of the Doctor (PW7) was that it was caused by blunt weapon as stated earlier. The Investigating Officer did not make any attempt to recover the crime weapon and to ascertain the weapon actually used by the accused-appellant. The injured person (PW3), while deposing before the court also did not make any reference to "khukri". The evidence of the Medical Officer and the description of weapon made in the FIR are quite contradictory and on the basis of such evidence, it is not possible to take a view that the accused-appellant used "khukri" which is a sharp weapon.

10. This being the position, it would not be fair to import that the intention of the accused-appellant was to kill the injured. The accused-appellant is a graduate and running a shop to maintain his livelihood. In his statement on sentence, the accused-appellant has begged for releasing him on payment of fine.

11. In view of the aforesaid discussion, this Court is left with no other alternative but to upheld the conviction of the accused-appellant and to show leniency towards him in regard to punishment. Accordingly the sentence of three years rigorous imprisonment as awarded by the learned trial court, is reduced to one year rigorous imprisonment without any alteration to fine.

12. Lower court records may be returned forthwith immediately.

13. The accused-appellant shall surrender before the trial court within thirty days from today to serve the sentence failing which the learned trial court shall issue warrant of arrest for execution of sentence.

14. Needless to say that any detention undergone by the accused-appellant already may be set off.

This appeal stands partly allowed, and stands disposed of.