(2012) 06 GAU CK 0050

Gauhati High Court

Case No: Criminal Revision Petition No. 580 of 2004

Md. Islam Uddin	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision: June 11, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 401
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 323, 324

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Advocate: S. Isman, Mr. A Choudhury, Mr. S.B. Choudhury and Ms. D.R. Deka, for the Appellant; D. Das, Addl. P.P., for the Opposite Party 1, Mr. P. Kataki, N. Barkakati and Mr. S. Murarka, Amicus Curiae, for the Respondent

Final Decision: Dismissed

Judgement

I.A. Ansari

1. This revision has put to challenge the findings of acquittal, recorded against the opposite party Nos. 2 to 6 herein, in the judgment and order, dated 17-05-2004, passed, in GR Case No. 752/2001, u/s 147/148/447/323 IPC, by the learned Judicial Magistrate, 2nd class, Morigaon. The prosecution''s case may, in brief, be described thus: On 20-12-2001 at about 8 a.m., accused persons, namely, Golam Hussain, Amir Hamza, Abul Kasem, Eusuf Ali and Ashraf Ali, entered into the land of Md. Abdul Rasid and assaulted him with dao and jathi (spear) following a quarrel between him, on the one hand, and the accused-opposite party, on the other, as regards Abdul Rashid''s right to plough the said land. When Abdul Rashid''s son, Nizamuddin, and his wife, Hazera begum (PW3), intervened, they, too, were assaulted by the accused persons and all of them sustained injuries. By lodging an Ejahar, in writing, PW1 (Islamuddin), son of Abdul Rashid and Hazera Begam, informed the police about the occurrence. Based on the said Ejahar, and treating the same as the First Information

Report (in short, ''FIR''), Mikirbheta Police Station Case No. 124/01, under Sections 147/148/ 447/325/326/427 IPC, was registered. During the course of investigation, all the said three injured were examined by PW8 (Dr. B. Nath), at Civil Hospital, Morigaon.

2. As the injuries, found on Abdul Rashid (PW2), were too many, he was admitted in the hospital as an indoor patient and, after treatment, he was released on 20-12-2001. On completion of investigation, police submitted charge sheet, against the accused-opposite party, under Sections 147/148/447/323 IPC.

3. At the trial, when charges, under Sections 148, 447 and 324, read with Section 149 IPC, were framed, the accused-opposite party pleaded not guilty thereto.

4. In support of their case, prosecution examined ten witnesses including two doctors. All the accused-opposite party were, then, examined u/s 313 Cr.P.C. and, in their examination aforementioned, all of them denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of total denial. No evidence was adduced by the defence.

5. On having reached the conclusion that the charges against the accused-opposite party could not be proved by the prosecution beyond reasonable doubt, the learned trial Court acquitted them accordingly. Aggrieved by the acquittal of the accused-opposite party, the informant preferred an appeal, which came to be registered as Criminal Appeal No. 199 of 2004. As the appeal was found to be not maintainable, the same was converted into the present criminal revision, namely, Criminal Revision No. 580 of 2004.

6. I have heard Mr. S. Murarka, learned Amicus Curiae, and Mr. P. Katoki, learned council for the accused-opposite party. I have also heard Mr. D. Das, learned additional learned Public Prosecutor, Assam.

7. Before determining the question as to whether the findings of acquittal, reached against the accused-opposite party, are or are not sustainable in the face of the evidence on record and the law relevant thereto, it is apposite to take note of the scope of the revisional power of the High Court in the cases arising out of acquittal. The High Court, it must be borne in mind, cannot convert a finding of acquittal into a finding of conviction, while exercising its power of revision. One may refer, in this regard, to Sub-Section (3) of Section 401 Cr.P.C., which specifically prohibits conversion of a finding of acquittal into that of conviction by the High Court in exercise of its revisional jurisdiction. (See, Sheetala Prasad and Others Vs. Sri Kant and Another,).

8. Some situations, wherein interference by the High Court, in exercise of its revisional jurisdiction, is possible, may be set out as under:

1. Where the trial court has wrongly shut out evidence, which the prosecution wished to produce;

2. Where the admissible evidence is wrongly brushed aside as inadmissible;

3. Where the trial court has no jurisdiction to try the case and has still acquitted the accused;

4. Where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence, and

5) Where the acquittal is based on the compounding of the offence, which is invalid under the law.

(See, Sheetala Prasad and Others Vs. Sri Kant and Another,).

9. What may also be borne in mind is that while exercising revisional jurisdiction against an order of acquittal, the interference by the Court must be in exceptional circumstances, where justice requires interference for correction of manifest illegality or for preventing gross miscarriage of justice.

10. In the present case, as far as the informant (PW1) is concerned, he had, admittedly, not witnessed the occurrence inasmuch as his clear evidence is that he was informed by his brother, Sahidul, that the accused-opposite party had entered into their land with dao, jathi and lathi and, upon receiving the information, when he (PW1) went running to their land, he found his father, Abdul Rashid (PW2) and his brother, Nizamuddin, lying on the ground with injuries on their persons and it was Abdul Rashid (PW2), who gave him the names of the persons, who had assaulted him and others.

11. I may be pause here to point out that, considering the fact that Abdul Rashid (PW2) has, nowhere, deposed that he revealed the names of the assailants to PW1, the evidence, given by PW1, that his father had told him the names of the accused, is nothing but hearsay and could not have, therefore, legally fallen within the purview of the learned trial Court''s consideration.

12. Bearing in mind the fact that PW1 was not, admittedly, an eye witness to the occurrence of assault on his father, mother and brother, let me, first, come to the evidence of Abdul Rashid (PW2). His evidence is that he, along with Nizamuddin and Hazera Begum, went to their paddy field and, while they were working in the paddy field, the accused-opposite party, namely, Gulam Hussain, Amir Hamja, Eshab, Ashraf and Kasem arrived there and Gul Hussain, father of Kasem, assaulted him (PW2) with jathi on his leg and Kasem gave a blow with dao on his head and that accused Amir Hamza also assaulted him (PW2) with jathi on his left arm. PW2 has also deposed that Nizamuddin was assaulted by accused Eshob and Ashab with lathis and, having so assaulted them, the accused left the place of occurrence.

13. When one turns to the evidence of PW8 (Dr. B Nath), what clearly transpires is that according to the doctor, he found lacerated injuries on the left forearm (dorsal aspect) of Nizamuddin. The evidence, given by PW2, therefore, that two persons

aforementioned had assaulted Nizamuddin by lathi are clearly not supported by the evidence of the doctor (PW8) inasmuch there was only one injury found on the left forearm of Nizamuddin; whereas his (PW2) father''s evidence is that his son, Nizamuddin, had been given blows with lathis by the accused persons, namely, Eshob and Ashab.

14. In the circumstances, indicated above, PW2 cannot be regarded as a wholly reliable witness, because if he were telling the truth, there would have been more than one injury, as described hereinbefore, on the person of Nizamuddin. Thus, depending upon the evidence of PW2, none of the accused-opposite party can be held to have assaulted Nizamuddin.

15. Coming to the doctor''s findings, as regard the injuries found on PW2, I notice that according to the doctor (PW8), the injuries, found on PW2, were as under:

I. Lacerated injury of right shoulder portion part 1/2"x 1/2" skin deep.

II. Lacerated injury of the occipital region (back of head transversely place (-) 1 1/2" x 1/2"

III. Lacerated injury of the right side partial region (side of head) 1/2x 1/4" x bone deep.

IV. Lacerated injury of left deltoid (side shoulder) region anterior aspect 1/2" x 1/4" x skin deep.

V. Lacerated injury lateral side of the right side of right thing 1 1/2" x 1/2" skin deep.

16. The doctor (PW8) opined that the injuries, found on the person of PW2, were caused by blunt object.

17. Apart from the fact that, according to the doctor (PW8), all the injuries, found on PW2, were lacerated injuries and the same were caused by blunt weapon, what is worth noticing is that according to the doctor (PW8), PW2 had sustained injuries on his right shoulder, on the occipital region of his head, on the right parietal region of his head, on his left shoulder and on his right thigh. Had PW2 been assaulted by dao and jathi (spear) as claimed by him, he would have obviously sustained cut injuries and also punctured wounds.

18. Thus, the medical evidence on record belies the ocular evidence of PW2 so far as his own injuries are concerned. This apart, PW2 claims that accused Kasem''s father, Gulam Hussain, assaulted him with jathi on his leg; whereas the medical evidence does not disclose any punctured wound on the leg of PW8; rather, the medical evidence on record reveals lacerated injury on the left thigh of PW8. PW2 has further claimed that accused Amir had given him a blow with a jathi on his left arm, but no punctured wound was found on left arm of PW2. In fact, no injury was found on the left arm of PW2.

19. So far as PW9 is concerned, he had treated PW2 at the hospital and his evidence is that he had found stitched wound on the skull of PW2. The evidence given by PW9, too, was that the said injuries were caused by blunt object. It was not even suggested by the prosecution to either PW8 or PW9 that PW2 had sustained cut injuries on any part of his body or that either he (PW2) and/or his son, Nizamuddin (not examined) had suffered punctured wounds and that the evidence, given by them (i.e., PW8 and PW9), are incorrect.

20. In the circumstances, pointed out above, even if the evidence of PW2 is not rejected as wholly unreliable, his evidence would, at best, fall within the category of those witnesses, who are neither wholly reliable nor wholly unreliable, and a witness of this category would require, in order to place any reliance on his evidence, corroboration of his evidence by means of some other evidence, direct or circumstantial.

21. Let me, now, look into the evidence on record to determine if the evidence of PW2 is corroborated by any other evidence on record. My quest for an answer to this question brings me to the evidence of PW3 (Hazera Begam), whose evidence is to the effect that Gulam Hussain assaulted PW2 on his leg with jathi and Kasim gave dao blow on the head of (PW2) and that accused Amir Hamza, too, assaulted her husband (PW2) with jathi on his left arm, accused Astab and Isab Ali assaulted her son, Nazimuddin, with lathis on his head and also on other parts of his body. It is also in the evidence of PW3 that when she requested the accused not to assault her husband and son, accused Gulam Hussain assaulted her on right arm with jathi.

22. The evidence of the doctor (PW8) is, however, to the effect that Hazera Begam (PW3) had sustained lacerated injury on her right arm. Had PW3 been assaulted by jathi (spear), as deposed to by her, she would have sustained punctured wound on her right arm. Similarly, her husband would have also sustained, if her evidence were true, punctured wound on his leg; whereas her husband had received, according to PW8 (doctor), lacerated injury on his thigh. Further-more, contrary to her evidence that her son, Nizamuddin, had been assaulted, on his head, by lathi, no injury was found by the doctor (PW8) on Nizamuddin''s head. Further-more, PW3 claimed that her son had been assaulted on different parts of his body, but there was only one injury, which the doctor found on the person of Nizamuddin. Thus, the evidence of PW3, too, is in clear conflict with the medical evidence on record and, in such circumstances, implicit reliance cannot be placed on the evidence of PW3 either. She, too, would, therefore, fall in the category of those witnesses, who are neither wholly reliable nor wholly unreliable, and her evidence, too, would require corroboration from credible evidence, direct or circumstantial, if her evidence is made the basis of conviction of the accused-opposite party.

23. In the present case, there is no evidence of any witness on record, who claims to have seen assault on either PW2 or his son, Nizamuddin, or his wife, PW3. Since both PW2 and PW3 had been found to be infirm witnesses, they cannot be taken to

have corroborated each other''s evidence inasmuch as the evidence of one infirm witness cannot be taken to have been corroborated by the evidence of another equally infirm witness.

24. Situated thus, one has no escape from the conclusion that the learned trial Court''s finding, that the prosecution had not succeeded in improving their case against the accused-opposite party beyond reasonable doubt, was not incorrect and/or illegal. As the findings, reached by the learned trial Court did not suffer from any infirmity, legal or factual, interference with such a finding is impermissible in law. The present one is not a case, where the learned trial Court can be said to have ignored a piece of relevant evidence or can be claimed to have taken into account a piece of evidence, which was irrelevant or inadmissible in law.

25. Thus, the findings of acquittal, which the learned trial Court had reached, cannot be interfered with by invoking this Court''s revisional jurisdiction.

26. In the result and for the foregoing reasons, this revision fails and shall accordingly stand dismissed. Send back the LCR.