

(2012) 02 GAU CK 0069

Gauhati High Court

Case No: None

Monoranjana Phukan @ Puna,
Son of Shri Nabin Phukan,
Resident of Village – Balijan
Naharani, P.O.- Panitola, P.S.–
Tinsukia, Dist – Tinsukia, Assam

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Feb. 15, 2012

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

Bench: Single Bench

Advocate: For the Petitioner : Mr. T. C. Khatri, Sr. Advocate Mr. A.K. Ray, Advocate For the Respondent : Mr. K. Munir, Addl. Public Prosecutor, Assam, Advocates appearing for Parties

Judgement

1. Heard Mr. T.C. Khatri, learned Senior counsel, assisted by Mr. A.K. Ray, learned counsel for the convict petitioner. Also heard Mr. K. Munir, learned Additional P.P., Assam, appearing for the State respondent.

2. The present accused petitioner was convicted u/s 326 IPC and sentenced to undergo R.I. for two years and to pay a fine of Rs. 500/ in default, S.I. for one month vide judgment dated 17.7.04 passed by the learned Additional Chief Judicial Magistrate in GR Case No. 941/2003. His appeal, being CrI. Appeal No. 44(3)/04, was dismissed vide judgment dated 31.8.04 passed by the learned Additional Sessions Judge No. 2, Tinsukia by upholding the conviction and sentence passed by the learned trial court. The present petition has been filed against the aforesaid judgment of conviction and sentence.

3. Briefly stated, the prosecution case is that one Sri Binod Kakoti filed an ejahar before the Panitola Police Outpost stating that on 9.11.03 when Sri Jiban Kakoti, son of late Rajen Kakoti, was returning to his house after attending a feast organized by Naharani Janakalyan Sangha, he was stabbed by the accused petitioner and

accordingly a crime being Tinsukia P.S. Case No. 378 u/s 341/326 IPC was registered which gave rise to GR Case No. 941/03.

4. After investigation, the police submitted charge sheet against the accused petitioner u/s 341/326 IPC and accordingly charge was framed under the aforesaid sections of law. The accused petitioner pleaded not guilty and claimed to be tried.

5. On consideration of the materials and evidence on record, the learned trial court convicted the petitioner u/s 326 IPC. The said conviction and sentence was upheld by the learned appellate court below as stated above.

6. Mr. Khatri, learned Senior Counsel, submits that there is no eye witness to the alleged act of stabbing by the petitioner. There is no evidence supporting the prosecution case. According to him, the charge against the petitioner has not been proved by the prosecution beyond reasonable doubt inasmuch as no oral or circumstantial evidence have been brought on record establishing the guilt of the petitioner.

7. PW 3, Jayanta Chutia, is an important witness inasmuch as he could hear the sound that the victim Jiban Kakoti was stabbed by somebody but he did not see the accused Monaranjan Phukan @ Puna at or around the place of occurrence. The victim was examined as PW 5. As per his deposition, he returned home after the feast in the evening and he had the last talk with Jayanta Chutia who came to return the utensils which were used in the feast. The victim enquired from Jayanta whether he had closed the gate and upon knowing that the gate was not closed he came to the gate. As soon as he reach the gate he was stabbed by one Puna, the nick name of accused Monoranjan Phukan. PW 3, Jayanta Chutia, has not corroborated the evidence of the victim as he did not say that he saw Monoranjan Phukan @ Puna at or near the gate where the stabbing took place.

8. The prosecution examined one Binod Kakoti as PW 1. He is the brother of the victim Jiban Kakoti. At the time of alleged incident he formally filed the Ejahar. The FIR was scribed by him. He stated that he wrote the FIR as per the statement made by PW 1. This witness was also present in the feast and returned home after the feast. He has not seen the alleged occurrence but he came home after the incident and when he heard about the incident he lodged the FIR. As per the evidence of the victim he was stabbed by a sharp knife at his abdomen. The said knife was seized by police but it was not sent for FSL test. There is no evidence to the effect that the crime weapon knife was stained with blood. The said knife, although seized by the police, was not produced before the trial court and it was never exhibited. There is no evidence that any finger print was taken from the aforesaid knife seized by the police. No explanation has been offered by the prosecution as to why the crime weapon seized during investigation was not sent for FSL test and why finger print was not taken. If the finger print was taken it could have been verified whether the crime weapon was held or used by the convict petitioners. Further, if the knife would

was sent for FSL test, the prosecution could have been able to prove that it contained human blood and it could have been proved whether the blood contained in the knife belonged to or tallied with the blood of the victim.

9. The prosecution conducted the investigation in a very perfunctory and casual manner. The learned trial court, as it appears from the impugned judgment, largely relied upon the evidence of PW 2. This witness in his evidence stated that he saw the accused Monoranjan Phukan fleeing away from the gate of the victim and he found Jiban Kakoti lying near the gate and found the knife on the ground. He, along with other persons, took the victim Jiban Kakoti to hospital for treatment. This witness, however, did not say that he, in his own eyes, could see the act of stabbing by the accused Monoranjan Phukan on the person of the victim Jiban Kakoti. The Medical Officer PW 8 who examined the victim deposed that the injury was caused by sharp weapon but he also gave opinion that such injury could be caused by falling on sharp object.

10. On consideration of the aforesaid evidence, I am of the considered view, that the prosecution has not been able to establish the charge against the convict petitioner beyond reasonable doubt inasmuch as there is no ocular evidence nor any circumstantial evidence suggesting the guilt of the accused petitioner for convicting him under the aforesaid sections of law. The convict petitioner under the aforesaid facts and circumstances is entitled to benefit of doubt and acquittal on that count.

11. Accordingly, I set aside the impugned judgments and orders of the learned trial court as well as the learned appellate court.

12. The accused stands acquitted on benefit of doubt. Since the convict petitioner, as stated at the Bar, is on bail, the bail bond shall stand discharged. Return the LCR.