

GAHC010009412012



2025:GAU-AS:13411

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

Case No. : Crl.Rev.P./520/2012

MD. MOHAR ALI
S/O LT. HUSSAIN MISTRY @ ALI, JHACKATA, BAGARIGURI, P.O. MALIBARI
P.S. BOKO, DIST. KAMRUP, ASSAM.

VERSUS

STATE OF ASSAM

Advocate for the Petitioner : MS.D PAUL, MR.C M MAHANTA,MR.P MAHANTA

Advocate for the Respondent : , PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT

Date : 25-09-2025

Heard Mr. P. Mahanta, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor appearing for the State.

2. The present petition has been instituted by the petitioner, herein assailing the judgment dated 13.07.2012 passed by the learned Additional Sessions, Judge, Kamrup, Guwahati, in Crl.A. 46/2011, upholding the judgment and order dated 17.06.2011 passed by the learned Special

Judicial Magistrate, Kamrup in G.R. 1079/2003 thereby, convicting the petitioner, herein under Section 324/34 IPC and sentencing him to undergo RI for a period of 1 (one) year and to pay a fine of Rs.2,000/- (Rupees two thousand) in default, to suffer R.I. for another period of 2 (two) months.

3. The prosecution case, in brief is that on 10.02.2003 one Jehirul Islam had lodged an Ejahar before the Officer-in-Charge of Boko police station, *inter alia*, stating therein that on 05.01.2003, at about 8.30 P.M, the accused Fakaruddin, had called him to his house and had got him assaulted by the accused persons named in the *ejahar*, including the petitioner, herein, and he was attacked with dagger and dao. It was further stated that he somehow had saved his life and had gone to his house, wherein, he fell down unconscious. The police on receipt of the said FIR, registered the same as Boko Police Station Case No.19/2003 under Sections 147/326 IPC.

On conclusion of the investigation, the police laid a charge-sheet against the persons, including the petitioner, herein, under Section 147/326 IPC.

The learned Trial Court framed a charge under Section 326/147 IPC against the accused persons, including the petitioner, herein, to which, he pleaded not guilty and claimed to be tried and accordingly, a trial is ensued.

Vide order dated 12.12.2007, the case against the accused Fakaruddin and Innas was filed, inasmuch as, they were absconding and the charge was framed against the present petitioner and one Paritan Nessa under Section 326/34 IPC.

The charge being read over and explained to the petitioner, herein, and the said Paritan Nessa. They pleaded not guilty and claimed to be tried and accordingly, a trial is ensued.

During the trial, the prosecution had examined 5 (five) witnesses and

thereafter, the evidence of the accused persons, including the petitioner, herein, was recorded. The accused persons including the petitioner, herein, had examined 5 (five) witnesses on their behalf.

On conclusion of the trial, appreciating the evidences coming on record, the learned Trial Court was pleased vide the judgment dated 17.06.2011, to conclude that the charge framed against the petitioner under Section 326/34 was not proved. However, it was held that the materials brought on record had established a charge under Section 324/34 IPC beyond reasonable doubt. Accordingly, the Trial Court proceeded to convict the petitioner, herein, under Section 324/34. The co-accused tried along with the petitioner, was however, acquitted.

The petitioner, herein, being aggrieved by his conviction by the learned Trial Court, assailed the same by instituting an appeal being CrI.A. 46/2011, before the Court of learned Additional Sessions Judge, Kamrup, Guwahati.

The Appellate Court upon appreciating the evidences coming on record as well as considering the arguments advanced by the petitioner, herein, proceeded vide judgment dated 13.07.2012, to dismiss the said appeal and thereby, upholding the conviction of the petitioner, herein, by the learned Trial Court.

Being aggrieved, the petitioner has instituted the present proceeding.

4. I have heard the learned counsel for both sides and also perused the materials available on record.

At the outset, this Court would examine the conclusion reached by the learned Trial Court vide judgment dated 17.06.2011.

The learned Trial Court upon appreciating the evidences coming on

record had framed the following issues for determination:-

***“a) Whether on 05.01.03 informant Jahirul Islam sustained hurt?
Whether the hurt was grievous.***

b) Whether the accused in furtherance of common intention caused the said hurt to Jahirul Islam?

c) Whether the accused caused the said hurt to Jahirul Islam with sharp weapon?

d) Whether the accused caused the said hurt to Jahiul Islam voluntarily?”

The learned Trial Court, thereafter, considered the evidences coming on record in the matter and with regard to the issues framed had drawn the following conclusions:-

“5) PW I Jahirul Islam informant deposed in Court that on day of incident on 1.1.03 alter being assaulted he somchow escaped from the site of occurrence and after shouting became unconscious. That he regained his senses in the hospital. That he do not know who took him to hospital. That because of the injuries he could not work for three (3) years. That till date has not got the strength on his left hand.

6) PW2 Sabaruddin father of victim deposed in Court that on day of incident on hearing shout came out and saw Jahirul coming running and falling down in his courtyard. That alongwith him was his uncle Danesh Ali and they saw blood in the shirt of the boy That his uncle opened the shirt when saw injuries on Danesh's body, That saw injuries on hand back, chest and shoulder That Jahirul was unconscious at that time. That he brother Amar Ali,uncle Sukur Ali and many others took the injured to thana and from there to hospital. That injured had to stay in hospital for 16 days

7) During cross PW 2 stated that saw injuries on left shoulder and left back side of the injured that did not see the other injuries if they were.

8) PW 4 Omar Ali is brother of victim's father. He deposed in Court that on 1.1.2002 at about 9 pm Jahirul came to his house. That he saw several cut injuries on his body. That soon after Jehirul fell unconscious. That he along with others took him to Sontoli hospital.

9) PW 3 Dr Nekibuddin Ahmed, medical officer deposed in Court that on 05.01.2003 at 11,30 pm examined one Jahirul Islam and found the following injuries:-

a) cut injury in the front of the right shoulder,

b) cut injury in the left shoulder

- c) cut injury in the back of left sholder**
- d) cut injury in the back of the left chest**
- e) two nos of cut injury in the left forearm**
- f) cut injury in the left arm below the shoulder**
- g) cut injury in the medical aspect of the left forearm,**
- h) cut injury in the ventral aspect of the left arm.**

12) Now, both PW1 victim and his father PW2 deposed in Court that incideru ok place on 1.1.03 and PW4 Omar Als deposed in Court that incident took place on 1.1.02. But there is corroboration in their evidence as regards time of incident. In the ejahar marked as Exhibit-1) also date of incident mentioned as 5.1.03 So the witnesses coming to depose in Court about five 5 years after the incident, it may not be in their memory the exact date of incident

13) Now,PW1 victim deposed in Court that he somehow escaped from the site of occurrence and fell down unconscious. PW2 victim's father also deposed in Court that he saw Jahirul coming running and falling down in his courtyard. That he saw injuries on hand, back,chest and shoulder. That Jahirul was unconscious at that time

PW4 Omar Ali deposed in Court that Jahirul came to his house and he saw several cut injuries on his body. In his statement before police stated before police stated that he saw Jahirul lying in the courtyard drenched in blood. Howewa that Jahirul was seen in injured state on Omar Ali in both his statement before police and in his deposition before day of incident is stated by PW4 Court.

14) Defence also at the time of cross examination of PW1 victim and PW2 did not put any suggestion to them in denial of the fact that Jahirul sustained hurt on day of incident. The evidence of the witnesses also supported by the medical evidence on record.

15) From the discussion made above on the evidence on record it is held that Jahirul Islam sustained hurt on day of incident on 5.1.03.

16) Now let us determine whether the said hurt was grievous.

Medical Officer as PW3 deposed in Court that he opined that the injuries were grievous. And during his cross stated that none of the injuries were grievous.

Also perusal of the medical report (Exhibit-2)reveals none of the injuries mentioned therein comes within the seven clauses mentioned in section 320 IPC.

Now, PW I victim deposed in Court that because of the injuries he could not work for three (3) years. That till date has not got the strength on his left hand.

However the Medical Officer as PW3 deposed in Court that the injuries could be healed and the injured could resume his normal work in 14 days. So the deposition of the victim that he could not work for three (3) years is not supported by the medical evidence on record. So prosecution has failed to bring its case within clause 8 of section 320 IPC also.

17) It is therefore held that the injuries sustained by Jahirul Islam on day incident on 5.1.03 was not grievous.

18) PW1 Jahirul Islam victim deposed in Court that on the night of incident accused Fakaruddin called him to their house and alongwith Mohor and Yunus assaulted him with dao and dagger. That Fakaruddin with dao, Yunus with dagger and Mohor with fana(dagger like weapon)assaulted him. That he somehow escaped from the site of occurrence

19) During cross PW I victim stated that Mohor with fana(dagger like weapon)assaulted him because of which he sustained injury on his right shoulder. That no one saw the incident.

20) PW2 Saburuddin, father of victim deposed in Court that on day of incident at about 8pm he came to his house That accused Fakaruddin called his son Jahirul and took him. That after sometime on hearing shout came out and saw Jahirul coming running and falling in their courtyard.

21) PW4 Omar Ali deposed in court that on night of incident at about 9pm Jahirul came to his house and he saw several injuries on his body. Whereas in his statement before police stated that on hearing hue and cry came out and in the courtyard of Jahirul found Jahirul lying drenched, in blood.

22) PW5 Saimun Nessa was not an eye witness of the incident. She only deposed in Court that she heard that a 'marpit' took place in their village.

23) Now, PWI victim himself deposed in Court that no one saw the incident. But PW2 father of victim has supported the evidence of his son(PW1) to the extent that on the night of incident Fakaruddin called his son Jahirul to

their house. And after sometime saw Jahirul in injured state in their courtyard.

24) Now, Hon'ble Supreme Court in the case of Paresh Kalyandas Bhavsan vs Sadiq Yakubbhah Jamadar & others reported in AIR 1993 SC 1544 held the injured witness would be the last person to leave out the real culprits and implicate others falsely. However it becomes necessary to scrutinize their evidence with great care and caution. Normally in a case of this nature the evidence of such witnesses is scrutinized in the light of the medical evidence, their previous statements, the earliest version put forward and other circumstances like the investigation being defective and also the effect of omissions or discrepancies, if any.

25) Now, PW1 victim clearly deposed in Court that Fakaruddin with dao, Yunus with dagger and Mohor with fana (dagger like weapon) assaulted him. And during cross PW1 stated that Mohor with fana assaulted him because of which he sustained injury on his right shoulder)

In his statement before police also victim Jahirul has clearly implicated the accused Fakaruddin, Mohor and Yunus as assaulting and injuring him with dao and dagger.

The evidence of the victim is therefore consistent, corroborative, trustworthy and wins the confidence of the Court. And the more important thing to note is that it is supported by the medical evidence on record.

26) Now, the victim (PW1) has not implicated the accused Paritun Nessa However from the evidence on record it can be held that Mohor alongwith Fakaruddin and Yunus caused the said hurt to Jahirul. And as spires from the evidence of PW1 Jahirul. Mohor along with Fakaruddin and Yunus actively participated in the commission of the crime. It can be held that all three of them shared a common intention of causing hurt to Jahirul Although in our case at hand at present only Mohor is facing the trial, he can be held that he caused hurt to Jahirul alongwith the two other accused in furtherance of common intention.

Point no.3-

27) PW1 Jahirul victim deposed in Court that he was assaulted with dao, dagger and fana (dagger like weapon). His deposition also supported by the medical evidence on record as Medical Officer as PW3 in both his report (exhibit-2) and in his deposition before Court stated that the injuries were caused by sharp weapon. And dao, dagger and fana are also sharp

weapons within the meaning of section 324 IPC.

It is therefore held that Jahirul was assaulted with sharp weapon.

28) Now, before proceeding to discuss the next point for determination let us find out whether the evidence adduced by the defence is sufficient to shake the prosecution story.

29) DW2 Paritan Nessa deposed in Court that Jehirul at about 12 midnight went to her house thinking that her husband was not at home. That he caught hold of her husband thinking to be her. That assault took place between Fakaruddin and Jehirul with lathi. That thereafter Jehirul went home.

30) Now, defence failed to produce any other witness in support of the version of DW2 that Jehirul went to their house at 12 midnight to catch hold of her.

DW 2 further deposed in Court that the matter was compromised in village..DW3 Suleman Ali also deposed in Court that 'mel' (village meeting) took place over this and matter was compromised. During cross however stated that mel took place after five(5)years. That at the time of mel gaon panchayat president Najamuddin was in his own village.DWI during cross stated that she has submitted a document of panchayat but does not know what is written there.

31) It transpires from the deposition of DW2 Paritan Nessa and DW3 Suleman Ali that since day of assault Fakaruddin is not in their village.

32) DW4 Jeher Ali deposed in Court that he heard hue and cry at about 10pm and not 12 midnight as deposed by DW2 Paritan Nessa.

33) DW 2 Paritan Nessa also deposed in Court that she did not give any ejahar against Jehirul

Now, although burden of proving the case of defence is not so heavy as that of the prosecution but the evidence adduced by the defence fails to raise Even a reasonable probability.

34) Now, DW 1 Mohor Ali took the plea of alibi that on the day of incident he was at Guwahati.

Now with regard to the plea of alibi Hon'ble Gauhati High Court in the case of Narayan Debnath vs State of Assam reported in 2009 (4) GLT 338 held thus in the light of section 103 if the accused wishes the Court to believe in existence of the fact that he was at a place other than the place, where he is alleged to have been the burden to prove that he was elsewhere rests on the accused. The accused must prove his plea of alibi with certainty so as to exclude the possibility of his presence at the place and time of occurrence.

In the said case Hon'ble Gauhati High Court further held that-when the prosecution succeeds in proving its case, the Court has if the accused has taken the plea of alibi, obligation to determine whether the plea of alibi is or is not true. Moreover, when the plea of alibi, taken by an accused is found to be false, it becomes an additional link in the chain of circumstances, which may appear against the accused.

35) In our case at hand accused Moher Ali as DWI only deposed in Court that on day of incident he was working at Gunaahati He has thus really failed to discharge the burden placed upon him.

36) Now let us revert back to our point for determination No.4

PW I Jehirul Islam victim deposed in Court that he used to purchase things from the shop of accused Fakaruddin on credit. That money was due to be paid by him. That accused threatened to kill him over this. That on day of incident accused Fakaruddin called him to their house and he alongwith Mohor and Yunus assaulted him PW2 Sabaruddin father of victim also deposed in Court that on day of incident Fakaruddin called Jehirul to their house. The evidence of the said witnesses are corroborative, trustworthy and defence failed to shake their evidence during cross-examination From the evidence of PWI Jahirul it transpires that accused by their act Magistrated to cause hurt to Jehirul and thus can be said to have voluntainty Reused hurt within the meaning of section 321 IPC

37) The discussion aforesaid reveals that the witnesses particularly PWI Jehirul has not implicated accused Paritan Nessa in his evidence Said accused therefore entitled to acquittal.

38. However prosecution has been successful in proving beyond doubt the involvement of accused Mohor Ali alongwith the other accused. And although said accused was charged u/s 326/34 IPC but facts are proved which reduce it to a minor offence le section 324/34 IPC. Thus invoking sec 222(2) of Cruninal Procedure Code and in the light of the discussion made on the basis

of the evidence on record. accused Mohor Ali is held guilty of committing offence u/s 324/34 IPC.”

On drawing the said conclusions, the learned Trial Court proceeded to sentence the petitioner, herein, as follows:-

“ORDER

I hereby convict the accused Mohor Ali u/s 324/34 IPC and sentence him to R.I (Rigorous imprisonment) for one (1) year and to pay a fine of Rs.2,000/- (Rs two thousand only) i.d. further R.I. for two (2) months.

The fine if realized be paid to the victim as compensation.

On the other hand accused Paritan Nessa is acquitted of the charges u/s 324/34 IPC with a direction to set her for the at liberty.”

5. This Court has meticulously perused the conclusions drawn by the learned Trial Court in the light of the evidences coming on record. Although the learned counsel for the petitioner has submitted that the conclusions drawn by the learned Trial Court would not mandate an acceptance in view of the fact that there was clear discrepancy in the manner, in which the FIR in the matter was lodged. He submits that initially an FIR was lodged on 06.01.2003 by the father of the victim and thereafter, when the victim was released from the hospital, he had lodged the FIR on 10.02.2003.

It is submitted that the proceedings against the accused was initiated on the basis of the second FIR, which he says to be not maintainable rendering the conviction of the petitioner, herein, unsustainable. This Court has considered the said issue and finds that the first FIR lodged on 06.01.2003, was never registered and it was the FIR that was lodged by the informant/victim on 10.02.2003, that was taken forwarded and the conviction of the petitioner, herein, ordered. Basing on the direct evidences coming on record implicating the petitioner, herein, in the offence alleged against him, this Court finds that the objection raised by the learned counsel for the petitioner, in the facts and circumstances of the case, would not mandate

acceptance.

6. Having drawn the said conclusion, this Court has also perused the conclusions drawn by the learned Trial Court. On perusal of the said conclusions, this Court finds that the said conclusions have been so drawn on due and proper appreciation of the materials coming on record in the trial and accordingly, the conviction of the petitioner, herein, under Section 324/34 IPC, would not mandate any interference.

7. Having drawn the said conclusion, this Court has examined the judgment dated 13.07.2012 passed by the learned Appellate Court. This Court finds that the petitioner, herein, had not taken any ground before the learned Appellate Court with regard to the discrepancy existing in the matter regarding filing of repeated FIRs. This Court has perused the conclusions reached by the learned Trial Court and finds that the same are supported by the evidence coming on record in the enquiry. No infirmity has been found with the conclusions drawn by the learned Trial Court in the matter.

8. Accordingly, this Court is of the view that the judgment and order dated 13.07.2012 passed by the learned Appellate Court would not mandate any interference. Accordingly, the conviction of the appellant under Section 324/34 stands affirmed.

9. Having drawn the said conclusion, this Court notices that the learned Trial Court while proceeding to sentence the appellant, 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 the offence committed by the petitioner, herein.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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 appellant, herein, by this Court.

15. Accordingly, for the reasons recorded hereinabove, 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 appellant to jail, he should be extended the benefit of Under 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.

16. 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), each, along with personal bond before the learned Trial Court i.e. learned Special Judicial Magistrate, Guwahati, Assam, and undertake to the effect that the petitioner shall maintain peace and good behavior through the period of 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.

17. With the above observation and direction, the Criminal Revision Petition stands disposed of.

18. Registry to send down the records of the matter to the Trial Court along with the copy of this order for information and necessary action.

JUDGE

Comparing Assistant