

Cr1.A. 36/2004  
BEFORE  
THE HON'BLE MR. JUSTICE B D AGARWAL

The appellant herein has been convicted under Sections 448/326/307 IPC vide judgment dated 11.12.2003, passed by the learned Additional Sessions Judge No.2, Siv asagar in Sessions Case No. 168( S-S) of 2001. After convicting the appellant, the learned Addl. Sessions Judge has sentenced the appellant to undergo RI for 3 (three) months for the offence under Section 448; RI for 2 years with fine of Rs .1,000/- under Section 326 IPC and 3 years RI with fine of Rs.1,000/- for conviction under Section 307 IPC. In default of payment of fine, the appellant has been directed to undergo further RI for 6(six) months.

2. Being aggrieved with the conviction and sentence, the appellant has preferred this appeal.

3. Heard Mr. M Biswas, learned Amicus Curie for the appellant who is assisted by Mr. PJ Phukan, learned counsel for the appellant. Also heard Mr. K Munir, learned Addl.P.P. for the State. I have also gone through the impugned judgment and evidence on record.

4. From the evidence on record, it appears that altogether, 9 (nine) witnesses were examined by the prosecution. These witnesses include one of the two victims, his wife, villagers from the locality, doctors and the I.O. Thereafter, the learned Addl. Sessions Judge also summoned the Assistant Professor of Orthopaedic Department, AMCH, Dibrugarh as well as the second injured Jadab Rajkonwar and recorded their testimonies as CWs 1 and 2 respectively. These witnesses were also thoroughly cross examined by the learned defence counsel.

5. The defence case was that due to previous enmity, a false case has been framed. Though the accused stated in his statement under section 313 CrPC that he will give evidence in defence but no such defence evidence was tendered. After going through the evidence on record, the learned Addl. Sessions Judge has accepted the prosecution story and he has convicted the appellant as indicated above.

6. It is needless to mention here that the injured persons and victims are the best witnesses since they are less likely to implicate an innocent person shielding the real culprit. In the case before me, both PW-2 and CW-2 (injured persons) have categorically stated that they were assaulted by the appellant with a sharp weapon like dao.

7. PW-1 is the wife of injured Madhab Rajkonwar. She claims herself to be the eye witness of the incident. However, in the cross-examination, PW-1 has deposed that at the relevant time, she was in the paddy field at a distance of ½ km. Even then, the testimony of PW-1 cannot be thrown overboard. At least she must have returned home within moments and must have been reported about the incident by the husband and on that basis, FIR was lodged naming the appellant as the assailant.

8. PW-3 is the co-villager and he is another eye-witness to the incident. This witness has stated that at about 12.30 pm, he saw the appellant coming on bicycle from the house of injured Jadab shouting that if they do not withdraw a pending case, he will finish the injured Jadab. Hearing this warning from the appellant, the witness went to the injured's house and he was told that the accused was insisting to withdraw the earlier case. After reporting so, the injured Jadab started to go to the police station and, in the meanwhile, the appellant again arrived at the scene and assaulted both Madhab and Jadab( brothers) . The witness has further deposed that he then took up a lathi to chase away the appellant and then the appellant fled away. I do not find any penetrating cross-examination to take a view that PW-2 has given a tainted evidence. PWs 4, 6 and 7 have virtually given hearsay evidence .

9. A suggestion was given to all the non-official witnesses that a false case was framed on the basis of earlier injuries. This defence plea must have been taken on the ground that the injury report of the second injured, namely, Jadab showed that he was admitted at AMCH, Dibrugarh on 29.6.2000 and was discharged on 22.8.2000. Since, it was the prosecution case that incident took place on 28.7.2000 and since injury report of the hospital mentioned that the second injured was admitted in the hospital in the month of June, 2000, the aforesaid plea of filing a false case must have been taken. However, CW-1 subsequently, clarified that inadvertently, the date 29.6.2000 was mentioned in the injury report instead of 29.7.2000. I am also of the view that the plea of false case on the basis of previous injury must have been raised because the prosecution witnesses had admitted about an earlier case filed by the second injured Jadab. Strangely, the accused did not make any request to the Court to call for the records of earlier case to prove that Jadab was not assaulted on 28.7.2000 and that the allegations of assault upon him was based on the previous incident.

10. In view of corroborative evidence from the independent witnesses as well as from the doctor, I find no difficulty to hold that the appellant had committed the offence of inflicting grievous injury upon Madab and Jadab, trespassing in their house compound. Hence, the conviction recorded by the Additional Sessions Judge under Section 448/326 IPC are hereby maintained.

11. With regard to the conviction of the appellant under Section 307 IPC, the learned counsel for the appellant submitted that to bring the offence within the mischief of 307 IPC, the prosecution must establish that the assailant had the intention to commit murder of the person or that he had the requisite knowledge that due to the injuries, the victim may die.

12. According to the learned counsel for the appellant, PW-2 was not referred to medical college hospital though he had sustained injury on the forehead. Besides this, PW-2 has admitted that he was released from the hospital within four days and this has also been stated by the doctor. The other injured sustained cut wound on the wrist joint and he was not assaulted on a vital organ. Under these circumstances, conviction of the appellant under section 307 is hereby set aside.

13. In the result, the appeal stands partly allowed.

14. The conviction of the appellant under Section 307 IPC is hereby set aside. The conviction of the appellant under Section 448/326 IPC along with the sentence recorded by the learned Addl. Sessions Judge are hereby maintained.

15. The appellant is directed to surrender before the second Additional Sessions Judge, Sivasagar immediately to serve out the remaining period of sentence.

16. The Registry is directed to return the L:CR with a copy of this judgment.

17. The learned Amicus Cure shall be entitled to one day's fees.