

GAHC010210372014



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

Case No. : Crl.Rev.P./234/2014

KHITI KANTO SAIKIA and ANR.
S/O LT. MADAN SAIKIA

2: KANDARPA SAIKIA @ PINKU SAIKIA
S/O KHITI KANTO SAIKIA BOTH ARE R/O TULASHIMUKH PATHACHUK
UNDER NAGAON SADAR P.S. IN THE IDST. OF NAGAON
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR

2:JITEN CHANDRA DAS
S/O JOYKANTO DAS R/O BURAGOHAIN GAON MOUZA- PAKHIMORIYA
P.S. NAGAON SADAR DIST. NAGAON
ASSAM

Advocate for the Petitioner : MS.H HAZARIKA

Advocate for the Respondent :

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. B.M. Choudhury

Advocate.

For the Respondent : Mr. K.K. Parasar,
Addl. Public Prosecutor,

Assam.

Date of Hearing : 23.06.2022.
Date of Judgment : 30.07.2022.

JUDGMENT AND ORDER (CAV)

Heard Mr. B.M. Choudhury, learned counsel appearing for the appellant. Also heard Mr. K.K. Parasar, learned Addl. Public Prosecutor, representing the State of Assam.

- 2.** This is an application under Section 397 of the Code of Criminal Procedure read with Section 401 of the said Code whereby the judgment and order dated 25.03.2014 passed by the learned Addl. Sessions Judge, Nagaon in Criminal Appeal No.31(N)/2013 is put to challenge.
- 3.** In G.R. Case No.429/2010, the petitioners were convicted by the Chief Judicial Magistrate, Nagaon under Sections 323 and 325 of the Indian Penal Code read with Section 34 of the said Code. The petitioners preferred an appeal before the learned Addl. Sessions Judge, Nagaon dismissed the appeal and hence this revision petition has been filed.
- 4.** The prosecution case is like this - on 19.02.2010, at about 7 in the morning, the petitioners were catching fish in a pond that belonged to Jiten Ch. Das without his consent. His elder brother Phukan Ch. Das objected to that. On that issue, there was a quarrel between Phukan Das and the petitioners. The petitioners were allegedly beat Phukan Ch. Das as a result of which he became unconscious.

- 5.** Narrating the aforesaid facts, Jiten Ch. Das lodged the FIR before police at Nagaon Police Station and Nagaon P.S. Case No.240 of 2010

under Sections 447/379/325/326 of the Indian Penal Code read with Section 34 of the said Code, came into existence. Phukan Ch. Das was subjected to medical examination. The doctor found the following injuries on his person –

- (i) One cut injury over the right side of the parietal region of the scalp and
- (ii) Swelling over the right hand.

6. Phukan Ch. Das was referred to B.P. Civil Hospital at Nagaon. This time, the injury report is like this-

- (i) Bruise and swelling, defused on right forearm and
- (ii) Bruise and swelling with abrasion on right parietal scalp of head

7. During the trial, the charges under Sections 447/323 and 325 of the Indian Penal code read with Section 34 of the said Code were framed against the petitioners. They pleaded not guilty to the said charges.

8. The prosecution side examined 7(seven) witnesses. The petitioners did not examine any witness.

9. The first witness is Sarumai Das. She stated that she did not know anything about the offence.

10. The second witness is Suren Ch. Das. He stated that though he did not anything about the offence, he had heard about the quarrel.

11. The third prosecution witness is Dr. Kalpana Baruah. She has stated in her evidence that on 19.02.2010 at about 8.30 A.M. she had examined Phukan Ch. Das on police requisition. She spoke about her report. She

has further stated that she referred Phukan Ch. Das to the B.P. Civil Hospital at Nagaon.

12. The forth prosecution witness is Phukan Ch. Das. He stated that the petitioner Pniku Saikia dealt a dao blow on his head and thereafter Khiti Kanto Saikia dealt a blow with a spade which fell on his right hand. Phukan Ch. Das further stated that a person called Diganta Das had arrived at the place of occurrence at the relevant time and on seeing him, the petitioners left the place. According to Phukan Ch. Das, Diganta Das had brought him home.

13. In his cross-examination, Phukan Ch. Das has stated that the pond where the occurrence took place was situated on a Government land. According to Phukan Ch. Das, many fellow villagers have their own ponds in Government lands.

14. Phukan Ch. Das has stated that the petitioners were actually draining out the water from the pond and were planting rice saplings.

15. The fifth prosecution witness is Dr. Lalit Ch. Nath of B.P. Civil Hospital, Nagaon. He spoke about his report.

16. The sixth prosecution witness is Diganta Das. He has stated in his evidence that when he arrived at the place of occurrence Phukan Ch. Das was lying on the ground and was shouting. Diganta Das further stated that petitioners were also shouting at Phukan Ch. Das and after some time they left the place. According to Diganta Das, he noticed bleeding injury on the head of Phukan Ch. Das and therefore he brought him home. Diganta Das has disclosed that he also noticed one shovel and one dao in the hands of the petitioners.

17. In his cross-examination, Diganta Das has stated that he had seen the petitioners draining out water from the pond.

18. The seventh prosecution witness is the police officer who spoke about the investigation.

19. In this case, the informant Jiten Ch. Das was not shown as a prosecution witness in the charge sheet. Therefore, he was examined as a Court Witness.

20. On the basis of the evidence on record, the trial court arrived at the impugned finding. I have carefully gone through the prosecution evidence.

21. Regarding the powers of the High Court under Sections 397 and 401 of the Code of Criminal Procedure, in *Ram Briksh Singh v. Ambika Yadav*, (2004) 7 SCC 665, the Supreme Court has held as under:

“4. Sections 397 to 401 of the Code are a group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. Though the jurisdiction under Section 401 cannot be invoked to only correct wrong appreciation of evidence and the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice.”

22. There are no discrepancies and contradictions in the prosecution evidence. The witness Phukan Ch. Das is the eye witness as well as the injured witness. It is a settled position of law that the evidence of an injured witness play an important role unless there are compelling reasons to discard their evidence. The evidence of Phukan Ch. Das has been

corroborated by the witness Diganta Das. I find that the offences against the appellant petitioners are proved beyond all reasonable doubt. There is nothing in the impugned judgment to correct manifest illegality which will result in gross miscarriage of justice. The learned trial court has correctly appreciated the prosecution evidence and the learned appellate court has corrected upheld the decision of the trial court.

23. For the aforesaid premised reasons, this Court finds that no interference of this Court is required. Accordingly, the revision petition is found to be devoid of merit and stands dismissed accordingly.

Send back the LCR.

JUDGE

Comparing Assistant