

GAHC010027192020



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

Crl.App.(J)/11/2020

1. Digamoni Das,
S/O. Sri Bhuban Das,
Purani Gaon, Biswanath Ghat,
P.S. Biswanath Chariali,
Dist. Biswanath, Assam.

Appellant

-Versus-

1. The State of Assam
Represented through the Public Prosecutor,
Assam

Respondent

For Appellant : Ms. Meghali Barman, Amicus Curiae

For Respondent : Ms. S. H. Bora, Additional Public Prosecutor

Date of judgment : 06.05.2024

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGMENT**

1. Heard Ms. Meghali Barman, learned Amicus Curiae for the appellant. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State.
2. This Criminal Appeal has been registered on receipt of an appeal petition, by the appellant, namely, Shri Digamoni Das, through the Superintendent, District Jail, Biswanath Chariali, impugning the judgment dated 31.05.2019, passed by the Court of learned Additional Sessions Judge (FTC), Biswanath Chariali in Sessions Case No. 3/2013, whereby the present appellant was convicted under Section 326 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for three months. The appellant was also convicted under Section 307 of Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 10,000/- and in default of payment of fine, to undergo further rigorous imprisonment for six months. The appellant was, however, acquitted of charge under Section 341 of the Indian Penal Code.

3. The facts relevant for consideration of the instant Criminal Appeal, in brief, are as follows : -

- (i) That on 04.10.2012, one Shri Parasmoni Borthakur had lodged an FIR before Officer-In-Charge of Biswanath Chariali Police Station, *inter-alia*, alleging that, on that day, at about 10.00 AM, when his uncle, namely, Paresh Borthakur, who is a priest of Jagdamba Temple, Borolasil situated at Biswanath Ghat, was on his way to the temple, the appellant all of a sudden attacked him with a sharp "*dao*" in front of his house and caused grievous injuries to him. The injured had to be admitted in Biswanath Chariali Hospital.
- (ii) On receipt of the said FIR, Biswanath Chariali Police Station Case No. 254/2012 was registered under Section 341/326/307 of the Indian Penal Code and the investigation was initiated.
- (iii) Ultimately, on completion of the investigation, the charge-sheet bearing No. 127/2012 dated 25.10.2012 was laid, against the present appellant under Section 341/326/307 of the Indian Penal Code.
- (iv) The case being exclusively triable by the Court of Session, it was committed to the Court of learned Additional Sessions Judge, Biswanath Chariali by the

Committal Court, i.e., the Court of learned Sub-Divisional Judicial Magistrate (M), Biswanath Chariali. The appellant faced the trial remaining on bail.

- (v) On 19.02.2013, charges under Section 341/326/307 of the Indian Penal Code were framed against the present appellant. Same on being read over and explained to him, he pleaded not guilty and claimed to be tried.
 - (vi) During the trial, the prosecution side examined eight (08) witnesses to bring home the charges against the present appellant. The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973, during which he denied the truthfulness of the testimony of the prosecution witnesses and pleaded his innocence. He led no evidence in his defence.
 - (vii) Ultimately, by the judgment which has been impugned in this appeal, the appellant was convicted and sentenced in the manner, as already described in Paragraph No. 2 hereinabove.
4. The point to be determined in this appeal is that as to whether the Trial Court was right in convicting and sentencing the appellant, namely, Shri Digamoni Das under Section 326 and Section 307 of the Indian Penal Code.

5. Before considering the submissions made by the learned counsel for both sides, let us go through the evidence which is available on record.
6. PW-1, namely, Parasmoni Borthakur, who is the first informant of the case, has deposed that on 04.10.2012, at about 10.00 AM when his uncle Poresh Borthakur was on his way for performing puja in the temple situated at Biswanath Ghat, the appellant was sitting on the road in front of his house. PW-1 has deposed that when his uncle asked the appellant to work in his house on daily wage basis to clear the bushes, the appellant assaulted him with a "*dao*" which he was carrying in his hand. The appellant assaulted the uncle of the informant on his head and neck with the "*dao*" causing grievous injuries for which he had to remain admitted in hospital for five days. PW-1 has exhibited the FIR as Exhibit-1.
7. During cross examination, PW-1 has deposed that he has not seen the incident of assault himself. He has also deposed that at the time of incident, his uncle was alone. He has also stated that the local people took his uncle to hospital and after coming to know about the incident, PW-1 also went to the hospital.
8. PW-2, Paresh Borthakur, who is the victim himself, has deposed that on the day of occurrence, he was on the way to the Biswanath Ghat Temple to perform puja as priest. On the way, he met the appellant, who was sitting on the road. PW-2 has

further deposed that when he asked the appellant to clear the bushes in his house on daily wage basis, the appellant assaulted him with a "*dao*" on his head thrice. However, when the said "*dao*" fell out of the hand of the appellant, the PW-2 came towards his house and sat on the road midway and local public took him to Biswanath Chariali Civil Hospital, where he was admitted for five days.

- 9.** During cross examination, he has deposed that the residence of the appellant is situated near the temple. He has also deposed that he did not have any quarrel with the appellant before the incident. PW-2 has also stated that shop of one Niya Das, is situated at a distance from the place of occurrence. He has answered in negative to a suggestive question put to him by the defence counsel to the effect that the appellant was mentally ill at the time of incident.
- 10.** PW-3, Hiranya Das, has deposed that he came to the place of occurrence on the day of incident after hearing about it. However, when he reached at that place, the victim was already taken to the hospital. He has further deposed that the villagers had snatched away the "*dao*" from the present appellant and thereafter, police came and seized the "*dao*" when it was handed over to the police by them. He exhibited the "*dao*" as Material Exhibit-1 and the seizure list as Exhibit-2. During cross examination, PW-3 has stated that his house is

situated about half a kilometer away from the place of occurrence. He has also deposed that the offence took place near the Jagra Temple. He has also stated that 6-7 boys had snatched the "*dao*" from the appellant and gave the same to the police. He has also stated that the injured had told him in the hospital that the appellant had cut him with a "*dao*". He has also deposed that he has put his signature on Exhibit-2 in the police station and he is not aware as to what has been stated in the Exhibit-2.

- 11.** PW-4, Niranjan Das, has deposed that while he went to the place of occurrence on the day of incident, he found the appellant was tied to a tree and he came to know from the villagers that the appellant has assaulted the victim and the villagers had handed over the "*dao*" to the police. He exhibited the seizure list as Exhibit-2 and his signatures thereon, as Exhibit-2 (2). During his cross examination, he has deposed that he had not witnessed the occurrence.
- 12.** PW-5, Mrs. S. Das, deposed that she was informed by the villagers that the appellant assaulted the priest Borthakur and he sustained injuries. She has further stated that the villagers took the injured to the hospital. PW-5 has also deposed that she has not witnessed the occurrence.
- 13.** PW-6, Rajiv Sarma has deposed that he also came to know from the villagers that the appellant had assaulted the victim.

He has also deposed that when he went to the place of occurrence, a sign on the seizure list which is exhibited as Exhibit-2 and his signatures thereon, as Exhibit-2 (3). During cross examination, he has deposed that he has not seen the incident.

- 14.** PW-7, Md. Samsuddin, who is the Investigating Officer had deposed that on 04.10.2012, he was at Biswanath Chariali Police Station and on that day, one Hiranaya Das (PW-3) had informed him that the appellant had assaulted Poresh Borthakur with a "*dao*" and the villagers have taken the injured to the hospital. He has further deposed that after coming to know about the incident, he went to the place of occurrence and found the appellant with a "*dao*". He has further deposed that he had seized the "*dao*" and has exhibited the seizure list-2 and his signatures thereon, as Exhibit-2 (4). He has further deposed that on the same day, the nephew of the victim had lodged a written FIR. He has also stated that after completion of the investigation, he had laid the charge-sheet which is exhibited as Exhibit-4 and his signature thereon, is exhibited as Exhibit-4(1). During cross-examination, he has stated that the FIR was lodged at 7.30 PM and that he had not seen the seized "*dao*" in the Court on the day of depositing before the Court.
- 15.** PW-8, Dr. Prsanta Bora, has deposed that on 04.10.2012, he was working as Senior Medical and Health Officer-I in Sub-

Divisional Civil Hospital, Biswanath Chariali. On that day, at about 11.00 AM, he examined, one Poresh Borthakur on police requisition. The injured reported the history of alleged assault. On examination, PW-8 found following:

- (i) Deep cut injury on the left side of the neck 7.5 cm with muscle depth and active bleeding;
- (ii) Deep cut injury on left frontal region, 5 cm scalp depth with slicing of frontal bone;
- (iii) Deep cut injury on left frontal region scalp depth 5 cm;

X-ray scull was advised.

In the opinion of PW-8, the injury found was grievous injury caused by sharp cutting light weapon. He exhibited the injury report as Exhibit-5. During cross examination, PW-8 has deposed that he has not mentioned the age of injury. He also deposed that the injury sustained by the victim may also be caused by falling on a sharp object.

- 16.** As already mentioned herein before, the appellant had denied the truthfulness of the testimony of the prosecution witnesses and has pleaded his innocence during his examination under Section 313 of the Code of Criminal Procedure, 1973. He adduced no evidence in his defence. However, during hearing on sentence after he was found guilty by the Trial Court, he had stated that he does not know why he committed the

offence for which he has been convicted. He also repented for his misdeed and pleaded for leniency.

17. Ms. M. Barman, learned Amicus Curiae has submitted that though the evidence on record suggests that it was the appellant, who had inflicted grievous injuries on the PW-2, however, the mental condition of the appellant was not stable at the time of the alleged incident. She has submitted that the testimony of PW-2 would show that there was no previous animosity between the appellant and the victim (PW-2), therefore, no motive could be established by the prosecution side for committing the offence by the present appellant. She has further submitted that, though, grievous injuries have been caused to the victim, the appellant had never intended to kill him and therefore, his conviction under Section 307 of the Indian Penal Code is not sustainable. She has also submitted that as the appellant was not in a stable mental condition when the offence was committed, he had no intention or knowledge required to constitute an offence under Section 307 of the Indian Penal Code, therefore, she has prayed for setting aside the conviction of the present appellant under Section 307 of the Indian Penal Code. In support of her submission, she has cited a ruling of the Apex Court in the case of "**Hari Singh Vs. Sukhbir Singh and Others**" reported in **(1988) 4 SCC 551** wherein it was observed as follows:

"7. Under Section 307 IPC what the court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention."

- 18.** Learned Amicus Curiae has also submitted that from the Medical Report of the present appellant, which was called for by this Court, it transpires that the appellant had a history of mental illness, since the year 2013 and which was diagnosed as "F-20" and presently also the mental health status of the appellant is not stable and he is in need of treatment for his mental health condition at Lokpriya Gopinath Bordoloi Regional Institute of Mental Health (LGBRIH), Tezpur, hence she has submitted that considering the health condition of the appellant, the sentence imposed on the present appellant may

be modified to the period of detention already undergone by him.

- 19.** On the other hand, Ms. S. H. Bora, learned Additional Public Prosecutor has submitted that the Trial Court has correctly arrived at finding of guilt of the present appellant on the basis of evidence available on record and same needs no interference by this Court. She has submitted that the testimony of PW-2, who is the victim in this case has been corroborated by evidence of PW-8, who is the doctor, who examined the victim after the alleged assault. She has submitted that the victim was assaulted thrice on vital parts of his body, such as neck and head with a sharp weapon which itself implies that the appellant intended to kill him. She has also submitted that when there is clear evidence of assault by the appellant and injuries sustained due to such assault on the victim, the absence of motive for the said act would not absolve the appellant from criminal liability. She has also submitted that even as regards medical condition of the victim is concerned, the medical report shows that he had a history of unstable mental condition since the year 2013, however, the alleged incident had occurred in the year 2012, and there is nothing on record to show that the appellant was suffering any mental ailment during that period. She has also submitted that no plea of insanity was taken by the appellant during the course of trial,

therefore, she has submitted that the impugned judgment may be upheld and the appeal may be dismissed.

- 20.** I have considered the submissions made by learned counsel for both the sides and have perused material on record carefully.
- 21.** The Trial Court seems to have arrived at the finding of guilt of the present appellant, under Section 326/307 of the Indian Penal Code, mainly, relying on the testimony of PW-2, who is the victim as well as PW-8, who is the medical officer who examined the victim after he sustained the injury in the assault by the appellant. The PW-2 has categorically stated that when he asked the appellant to clear the jungle in his house, he was assaulted by the appellant with a "*dao*" thrice on his head. The assault on the PW-2 by the appellant seems to be unprovoked. The evidence of PW-8 also shows that the victim sustained three deep cut injuries on vital parts of his body, which has already been described in Paragraph no. 15 of this Judgment. The testimony of PW-2 and PW-8 could not be demolished by the defence side and there is no reason to disbelief their testimony. The evidence of other witnesses also shows that the appellant was apprehended by the villagers with the "*dao*" which was used to inflict injury on the PW-2. As the injuries sustained by the victim, i.e., PW-2, are grievous in nature and as same were caused by a "*dao*", which is a tool for cutting and when used as a weapon of offence is likely to cause death, the

conviction of the appellant by the Trial Court under Section 326 of the Indian Penal Code, appears to be correct and thus needs no interference.

- 22.** As regards, conviction of the appellant under Section 307 of the Indian Penal Code is concerned, though, the learned Amicus Curiae has submitted that there was no motive for the appellant to attempt to kill the PW-2 appears to be acceptable. There appears to be no evidence on record to suggest as to what motivated the appellant to assault the PW-2 with a "*dao*". However, absence of motive, in itself would not absolve the appellant from criminal liability under Section 307 of the Indian Penal Code, if the intention or the knowledge as provided under Section 300 of the Indian Penal code may be attributed to the appellant. In the case of "***Hari Singh Vs. Sukhbir Singh and Others***" (*Supra*), the Apex Court has observed that under Section 307 of the Indian Penal Code, the intention precedes the act attributed to the accused. Therefore, the intention is to be gathered from all circumstances and not merely the consequence that ensue. The nature of weapon used, manner in which it is used, motive for crime, severity of the blow, the part of body where the injury were inflicted are some factors that may be taken into consideration to determine the intention. In the instant case, though, motive for the assault could not be ascertained, however, from the fact that the

appellant had used a "dao" as a weapon of assault to inflict injuries on PW-2; that he gave three blows by the said grounds on the vital part of the body of the victim, without any provocation, itself shows that the appellant, at that point of time, intended to kill PW-2. Moreover, though, learned Amicus Curiae has submitted that the appellant was not in a mentally stable condition at that time, however, it appears that no plea of insanity was taken by the appellant during the trial. Hence, the finding of conviction of the present appellant under Section 307 of the Indian Penal Code in the impugned judgment does not need any interference and the same is upheld.

- 23.** However, as regards the sentence imposed on the appellant is concerned, it appears that the Trial Court has not taken into consideration the fact that there was absence of motive on the part of the appellant and he had repented for his misdeed. Same ought to have been taken into consideration by the Trial Court, while imposing the sentence on the appellant. Moreover, from the medical report of the appellant, available before this Court, it appears that the appellant had a history of mental illness (diagnosed as "F-20") since 2013. The "F-20" disorder pertains to schizophrenia. The schizophrenic disorders are characterized in general by the fundamental and characteristic distortions of thinking and perception, and affects that are inappropriate or blunted. Clear consciousness and intellectual

capacity are usually maintained although certain cognitive deficits may evolve in the course of time. Though, the incident had occurred in the year 2012, the charges were framed against the appellant in the year 2013, and trial culminated only in the year 2019 and from the medical report available before this Court, it appears that during this period, the appellant had a history of mental illness. Further, the medical report, dated 10.08.2023, received from the jail doctor of District Jail, Biswanath Chariali mentions that the mental health status of the present appellant is not stable and he needs treatment at Lokpriya Gopinath Bordoloi Regional Institute of Mental Health (LGBRIH), Tezpur.

- 24.** Considering the above mentioned aspects, which may be regarded as mitigating factors, this Court is of the considered opinion that though, the conviction of the present appellant under Section 326 and Section 307 of the Indian Penal Code is upheld, however, the sentences imposed on the appellant need to be modified. Accordingly, the sentence imposed on the appellant under Section 326 of the Indian Penal Code is modified to six years of rigorous imprisonment instead of seven years of rigorous imprisonment. Similarly, the sentence imposed on the appellant under Section 307 of the Indian Penal Code is also modified to six years of rigorous imprisonment instead of ten years of rigorous imprisonment. The fine imposed on the

appellant by the impugned judgment under Section 326 as well as Section 307 of the Indian Penal Code by the impugned judgment and the sentence of imprisonment imposed in default of payment of fine by the impugned judgment is not interfered with and same shall remain as it is. The sentences imposed on the appellant shall run concurrently.

- 25.** The Superintendent, District Jail, Biswanath Chariali shall take all steps to provide all necessary medical treatment to the appellant and if required by regular medical checkup and treatment of the present appellant at Lokpriya Gopinath Bordoloi Regional Institute of Mental Health (LGBRIH), Tezpur during the period of serving out of remaining part of sentences imposed on the present appellant.
- 26.** With the above observations, this appeal is allowed in part to the extent as indicated herein above.
- 27.** Let the case record of Sessions Case No. 3/2013 along with connected files as well as a copy of the judgment be sent to the Court of learned Additional Sessions Judge, Biswanath Chariali.
- 28.** Let a copy of this judgment be also sent to the Superintendent, District Jail, Biswanath Chariali, where the present appellant is detained.
- 29.** The learned Amicus Curiae shall be entitled to the honorarium as per the prevailing rules.

30. This Criminal Appeal is accordingly, partly allowed and disposed of.

JUDGE

Comparing Assistant