

GAHC010012372013



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

Case No. : Crl.Rev.P./423/2013

TEPESWAR DAS and 5 ORS.
AGE 23 YEARS

2: SRI BHAITY DAS
AGE 27 YEARS

3: SRI SONE DAS
AGE 25 YEARS.

4: SRI DHANTI DAS
AGE 30 YEARS. ALL ARE SONS OF LT. BIREN DAS

5: SRI TILAK DAS

AGE 30 YEARS
S/O SRI KHAGEN DAS

6: SRI BHUPEN HIRA @ BUBU
AGE 23 YEARS S/O MANIK DAS ADD 1 TO 5 ARE OF VILL- NO. 2
MORAKOLONG AND NO. 6
OF VILL- FULGURI P.S. and DIST. MORIGAON
ASSAM

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.H R A CHOUDHURY, MR.A ALAM

Advocate for the Respondent : ,

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

09/09/2024

Heard Mr. A Alam, learned counsel for the petitioners and Mr. R J Baruah, learned Additional Public Prosecutor, Assam for the State respondent.

2. On 31.05.2012, the informant submitted a written FIR before the Officer-in-Charge of Morigaon Police Station stating that in the evening of that day, around 6 PM, while she was returning home from the paddy field and was passing by the side of the Mora Kolong Namghar, the accused persons, i.e., the petitioners herein obstructed her and wanted to commit rape on her. While she made hue and cry, her father arrived at the place of occurrence and then the accused persons assaulted her and her father thereby caused severe physical injuries on their persons. The informant stated that because of the injuries sustained by her father in that incident he was admitted in hospital for his treatment and as such, she submitted before the authorities of Morigaon Police Station to investigate the matter and to take appropriate action against the accused persons of the case.

3. Pursuant to the same, Morigaon P.S. Case No. 148/2012 under Sections 143/341/354/325 IPC corresponding to G.R. No. 652/2012 was registered.

4. After investigating the matter, police submitted the charge-sheet in said Morigaon P.S. Case No. 148/2012 vide Charge-Sheet No. 55 dated 29.06.2012 finding prima-facie evidence against the petitioners under Sections 143/341/354/325/323 IPC. Along with the charge-sheet, the concerned Investigating Officer also placed the medical examination report of the victims, i.e., the father of the informant.

5. On 09.08.2012, the learned Chief Judicial Magistrate, Morigaon in said G.R. No. 652/2012 arising out of Morigaon P.S. Case No. 148/2012 framed charges of the offences under Sections 143/341/354/323/325 of the IPC and read over the relevant sections of the IPC and explained those to the accused persons to which the accused persons pleaded not guilty and claimed to be tried. Accordingly, after recording the evidences of such prosecution witnesses including the informant, the victim, the mother of the informant and the concerned doctor, who examined the victim, the learned Trial Magistrate by its judgment dated 21.03.2013 convicted the petitioners under Sections 341/354/323/325/143 IPC and sentenced them to undergo Simple Imprisonment for 3 (three) months

each under Section 325 IPC, Simple Imprisonment for 3 (three) months each under Section 354 IPC and Simple Imprisonment for 1 (one) month each under Sections 341/323/143 IPC observing that the sentences to run concurrently.

6. Against the said judgment of conviction and sentence dated 21.03.2013 passed by the learned Chief Judicial Magistrate, Morigaon in said G.R. No. 652/2012 arising out of Morigaon P.S. Case No. 148/2012, the petitioners preferred an appeal under Section 374 Cr.P.C. being Crl. A. No. 11/2013 before the learned Sessions Judge, Morigaon.

7. The learned Appellate Court, i.e., learned Sessions Judge, Morigaon after hearing the parties by judgment and order dated 24.07.2013 partly allowed the said appeal preferred by the petitioners setting aside the judgment of conviction and sentence dated 21.03.2013 passed by the learned Chief Judicial Magistrate, Morigaon in G.R. No. 652/2012 under Section 354 IPC but upheld the judgment of conviction and sentence dated 21.03.2013 passed by the said Trial Magistrate in G.R. No. 652/2012 pertaining to Sections 143/341/325/323 IPC.

8. Aggrieved with the said judgment and order dated 24.07.2013 passed by the learned Sessions Judge, Morigaon, noted above, the petitioner preferred this criminal revision petition under Sections 401/397 of the Cr.P.C.

9. It is contended on behalf of the petitioners that the medical evidence was not exhibited before the learned Trial Court and without any such medical evidence, the learned Trial Magistrate, convicted the petitioners under Sections 341/354/323/325/143 IPC by judgment of conviction and sentence dated 21.03.2013 that was later upheld by the learned Appellate Court in Crl. A. No. 11/2013 on 24.07.2013.

10. It is also submitted by the petitioners that during pendency of this criminal revision petition, the informant and the victim sworn an affidavit on 08.12.2013 before the Notary Public at Morigaon stating that the informant and the victim as well as the convicted accused petitioners have compromised the dispute outside the Court and that the informant and the victim do not have any objection if the petitioners are acquitted and/or relieved in said G.R. No. 652/2012 arising out of Morigaon P.S. Case No. 148/2012.

11. This is a criminal revision petition and the challenge is against the concurrent finding passed by the learned Trial Magistrate as well as the learned Appellate Court.

12. The medical report of the victim reveals that the victim was examined by the concerned Medical Officer of Morigaon Civil Hospital around 11.45 AM on 01.06.2012 and during such medical examination, the concerned doctor found that the incident occurred due to the alleged assault and both the right upper incisor teeth were lost by the victim with other injuries on his right chest wall and back tender amounting to grievous injuries caused by blunt weapon. The said medical report of the victim relating to the father of the informant was placed as Exhibit 2 and the doctor concerned who examined the victim on 01.06.2012 as prosecution witness No. 4 proved his said medical report issued in favour of the victim. However, during cross, the concerned Medical Doctor, who examined the victim admitted the fact that X-ray report was not attached with the concerned medical report and that the age of injury sustained by the victim was also not mentioned in the injury report prepared and submitted by him.

13. However, it is seen that defence failed to establish and/or thwart the evidence of the prosecution witnesses that the victim did not sustain the injuries due to the assault of the accused persons of the case, i.e., the petitioners.

14. It is reiterated that this is a criminal revision petition against the concurrent finding of conviction and sentence passed by the learned Trial Magistrate as well as the Appellate Court.

15. It is seen from the records of the case that the petitioners were arrested by the concerned Investigating officer of Morigaon P.S. Case No. 148/2012 on 13.06.2012 and on the same day, they were released on personal bond after recording their statements as well as the statement of the local bailor under Section 161 Cr.P.C.

16. Finding such materials in the relevant record, the Court did not find any such illegality in the judgment and order dated 24.07.2013 passed by the learned Appellate Court, i.e., the Court of learned Sessions Judge, Morigaon in Crl. A. No. 11/2013 upholding the conviction and sentence dated 21.03.2013 passed by the learned Chief Judicial Magistrate, Morigaon under Sections 143/341/325/323 IPC.

17. Accordingly, this criminal revision petition, being devoid of merit, stands dismissed.

18. The petitioners are directed to surrender before the learned Chief Judicial Magistrate, Morigaon **on or before 30.09.2024** to serve out the sentence under Sections 143/341/325/323 IPC in terms of the judgment of conviction and sentence dated 21.03.2013 passed by the learned Chief Judicial Magistrate, Morigaon in G.R. No. 652/2012 arising out of Morigaon P.S. Case No. 148/2012.

19. Registry shall communicate this order to the learned Chief Judicial Magistrate, Morigaon as well as the learned Sessions Judge, Morigaon in said G.R. No. 652/2012 arising out of Morigaon P.S. Case No. 148/2012 forthwith.

20. Registry shall forthwith return the case record of G.R. No. 652/2012 arising out of Morigaon P.S. Case No. 148/2012 to the Court of learned Chief Judicial Magistrate, Morigaon along with a copy of this order.

JUDGE

Comparing Assistant