High Court of Meghalaya
Diskolan Rani vs . State Of Meghalaya & Anr. on 8 February, 2021

Serial No.12
Regular. List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. A. No.3 of 2019 Date of Judgment: 08.02.2021

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Diskolan Rani Vs. State of Meghalaya & Anr.

Coram:
Hon'ble Mr. Justice Ranjit More, Judge
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:
For the Petitioner/Appellant(s) : Mr. N. Syngkon, Adv.
Ms. L. Phanjom, Adv.

For the Respondent(s) : Mr. N. D. Chullai, AAG with

Mr. A. Kharwanlang, GA.

Mr. S. Sengupta, Addl. Sr. PP.

Per R. More, (J)

1. By the impugned judgement and order, the appellant is convicted for an offence punishable under Section 326 of the Indian Penal code and sentenced to suffer 10 (Ten) years' Rigorous Imprisonment (R.I) and to pay a fine of Rs. 40,000/- (Rupees Forty Thousand). In default of payment of fine, the appellant was further directed to suffer Simple Imprisonment (S.I) for a period of 1(one) year.

2. The prosecution case in short is as follows: -

On 10-07-2013, the appellant-accused Shri. Diskolan Rani and the victim Shri. Donborlang Rynjah went to work at Umsohlait village. On the same day, at night time they returned back to Umwiehsnieh and on reaching Umwiehsnieh village at about 9.00 P.M., the appellant-accused (Shri. Diskolan Rani) stabbed the victim (Shri. Donborlang Rynjah) with a small pocket knife, as a result of which the victim was badly injured. The victim was immediately taken to Umsning CHC for medical treatment. The medical report furnished by Dr. D. Nongrum of Umsning CHC shows that the victim suffered grievous injury caused by sharp weapon and the victim was accordingly referred to Shillong Civil Hospital for further treatment.

3. During further investigation it was found that there were three eye- witnesses who saw that the victim was attacked by the accused-appellant Shri. Diskokan Rani. These witnesses also assisted the victim to get medical treatment. The statements of these three eye-witnesses were recorded. The

statements of other witnesses were also recorded. During the course of investigation, the PO (place of occurrence) was visited and rough map of the same was drawn.

4. During investigation the accused was apprehended while he was travelling to Shillong. On being led by the appellant-accused person as per Section 27 of the Evidence Act, the weapon of the offence was recovered from his residence. The same was accordingly seized in presence of the witnesses and marked as Exhibit 'A'.

5. On the above facts and circumstances, after completing the investigation, the investigating agency found the prima facie case against the appellant-accused and accordingly charge-sheet was filed against him for an offence punishable under Section 307/326 of the Indian Penal Code.

6. Since the offence under Section 307/326 of the Indian Penal Code was exclusively triable by the Sessions Court, the case was committed to the learned Sessions Judge, Nongpoh for trial. Accordingly, learned Sessions Judge framed the charges against the appellant-accused for an offence punishable under Section 307/326 of the Indian Penal Code but the accused had pleaded not guilty and claimed to be tried.

7. During the trial, in order to prove the charge, the prosecution examined as many as 13 (Thirteen) witnesses and also relied upon 6 (Six) documents while the appellant-accused did not adduce any evidence. After the closure of the prosecution witness, the appellant was examined under Section 313 of the Cr. P.C wherein the appellant-accused denied his involvement in the instant case.

8. As stated above, after appreciating the evidence-on-record, the learned Sessions Judge concluded that it is proved that the appellant has committed the offence punishable under Section 307/ 326 of the I. P. C and accordingly sentenced him to suffer Rigorous Imprisonment (R.I) for 10 (Ten) years and in addition to this, he was also directed to pay a fine of Rs. 40,000/- (Rupees Forty Thousand).

9. Mr. N. Syngkon, learned counsel for the appellant-accused took me through the deposition of the witnesses. He submitted that the conviction of the appellant is based on the evidence of the eye-witnesses, namely, P. Ws No. 4, 5, & 7. He submitted that as a matter of fact, these witnesses have deposed that they have not witnessed the incident-in-question, therefore, they cannot be termed as eye-witnesses.

Mr. N. Syngkon, learned counsel for the appellant-accused submitted that the statement of the appellant-accused under Section 313 Cr. P.C was recorded on 07-08-2017 and thereafter victim P.W. 13 (Shri. Donborlang Rynjah) was examined on 26-09-2017. He submitted that after examination of the P.W. 13 (victim) no opportunity was given to the appellant to explain inculpatory statement made against him.

Mr. N. Syngkon, learned counsel for the appellant-accused further submitted that though knife (article-A) is shown to have recovered under Section 27 of the Evidence Act, both the seizure witnesses have not supported the seizure. In addition to this, Mr. N. Syngkon, learned counsel for the appellant-accused submitted that the knife (article-A) was not sent to the Forensic Lab in order

to prove that the alleged injuries were inflicted with the said knife (article-A). Mr. N. Syngkon, learned counsel for the appellant- accused also invited our attention with the provisions of 320 coupled with the evidence of Dr. D. Nongrum (P.W- 10) and submitted that by no stretch of imagination it can be said that the alleged injuries suffered by the victim is of grievous hurt caused by Sharp weapon.

10. Mr. N. D. Chullai, learned AAG at the outset does not dispute the prosecution mainly relied upon the deposition of the eye-witnesses. He also fairly stated that the prosecution case does not depend on the circumstantial evidence. He submitted that the version of the eye-witnesses, namely, P.Ws No. 4, 5 & 7 supports the fact that the appellant-accused inflicted injuries on the victim on the fateful night of 10-07-2013. Mr. N. D. Chullai, learned AAG in respect of the evidence of the victim (P.W- 13) invited our attention to the provisions of Section 311 of Cr. P. C and submitted that the Trial Court can summon material witnesses or examine any person at any stage of inquiry and, therefore, the examination of P.W-13 (victim), being before the stage of the judgement it cannot be faulted and, therefore his deposition is required to be taken into consideration. Mr. N. D. Chullai, learned AAG lastly submitted that there is sufficient evidence against the appellant and, therefore, he was rightly convicted by the Sessions Court for an offence punishable under Section 326 of the Indian Penal Code.

11. Having gone through the evidence-on-record and having considered the submission of the learned counsels for the respective parties, we find merit in the appeal. At the outset, we will consider the evidence of the eye-witnesses, namely, P.Ws No.4, 5 & 7.

The P.W - 4 has deposed that on the date of the incident he was returning from his workplace and on reaching at centre Umwiehsnieh, he saw two persons were going ahead of him, he heard the noise of fighting of some persons. He also heard the voice of calling help. He accordingly along with his friend went to see what was happening. He saw two persons fighting in the dark. P.W - 4 further deposed that one person fled away and the other was standing at the PO (Place of Occurrence). He stated the surname of the person who was standing at the Place of Occurrence is Rani. He deposed that the other person who fled away was known to him as Bah Rynjah. He saw that Bah Rynjah was injured, he took him to his home. He thereafter met the wife of the victim who informed the matter to the village headman and thereafter the victim was taken to Umsning CHC.

In cross-examination, he has specifically admitted that he has not seen by his own eyes that the appellant-accused attacked the victim and the victim ran away to a little distance and cried for help.

12. P.W - 5 has deposed that on date of occurrence, he along with the appellant-accused and one of his friend namely Rangtong were coming from the place of work. While they were relaxing at the side of one shop in Umwiehsnieh village, he heard the cry of the victim then he went to the Place of Occurrence (PO) and found the victim was injured. He strongly suspected that the accused-appellant has committed the crime. He also deposed that he was not interrogated by the police and only put his signature on the rough map at Ext-2.

In cross-examination, he has deposed that he did not remember the time and date of occurrence of the incident. He has further stated that he was returning from work from Umsohlait to Umwiehsnieh. He has specifically admitted that he was not the eye-witness of the instant case. He has also admitted that he was not present at the place of occurrence and he only suspected that accused-appellant must have committed the crime.

13. P.W-7 has deposed that he did not remember date, month and year of the incident. He further stated that when he himself along with Donbor Rynjah, D. Ryntong, Iohbor Nongkhlaw were coming from the place of work, on reaching at their village they were sitting beside one shop. He saw Shri. D. Rynjah and R. Rani were working to the Eastern side of the shop and thereafter, they disappeared from his sight. He further stated that after some time he heard the noise calling for help (Rap Rap). Then he went near the Place of Occurrence and met Don Rynjah on the road who showed him that he sustained injury in the rib and lower part of the stomach. He has also deposed that he suspected it was R. Rani who attacked Shri. Don Rynjah. He also specifically stated that he was not interrogated by the Police at all. In cross- examination he has admitted that he was not the eye-witness to the incident-in- question and he did not know who has committed the offence. He also further stated that he did not know whether the victim person was seriously injured or not.

14. From the evidence of P.Ws No. 4, 5 & 7 it is abundantly clear that they have specifically admitted that they have not witnessed the incident-in- question and, therefore, by no stretch of imagination they can be termed as eye-witnesses to the incident and their evidence is of no help to the prosecution. So far as the evidence of P.W - 13 is concerned we have already referred that his evidence was recorded subsequent to the statement of the appellant under Section 313 Cr.P.C of the Indian Penal Code. In para 5 of his deposition, he has stated that accused invited him for tea to his house. He refused to go to his house, but the accused forced him by pulling him towards his house. He has further deposed that there was a scuffle between them and the accused stabbed him thrice with a knife on his abdomen. It is true that there is no manner of doubt that prosecution could have examined P.W - 13, the victim, at any stage of the trial in the light of the provision under Section 311 of the Cr. P. C. The question falls for our consideration is whether the appellant ought to have been given an opportunity to explain the inculpatory statement made by the P.W - 13. We are of the considered opinion that it was the duty of the prosecution to re-record the statement of the appellant under Section 313 of the Cr. P. C., subsequent to the deposition of the P.W - 13. By refusing this opportunity to the appellant, the prosecution has committed gross illegality thereby depriving the appellant the opportunity to explain the inculpatory statement made against him. In this regard, reference can be made to the decision of the Apex Court in the case of Samsul Haque vs. State of Assam [(Criminal Appeal No.1905 of 2009) (2019 SCC OnLine SC 1093], the relevant paras for our purpose, Paras 13 & 22(22) reads as follows: -

> 13. "In the aforesaid context learned Senior Counsel has referred to the judgement of this Court in Sharad Birdichand Sarda v. State of Meharashtra to contend that if the circumstances are not put to the accused in his statement under Section 313 of the Cr. P. C., they must be completely excluded from consideration because the accused did not have any chance to explain them. This is stated to be the consistent view of this Court starting from 1953 in the case of Hate Singh Bhagat v. State of Madhya Bharat.

> Learned Senior Counsel also referred to the judgement in Sujit Biswas v. State of Assam for the proposition that the very purpose of examining the accused persons under Section 313 of the Cr. P. C is to meet the requirement of the principles of natural justice, i.e., audi alteram partem. The accused, thus, must be given an opportunity to explain circumstances which are not put to the accused in his examination under Section 313 of the Cr. P. C. cannot be used against him and must be excluded from consideration.
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> 22 (22). The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it.
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> Where no specific question has been put by the trial Court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed similar view in S. Harnam Singh v. The State ((1976) 2 SCC 819: AIR 1976 SC 2140), while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facets by the trial Court to the accused adds to vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise."

15. Reading of the above observation makes it abundantly clear that where the accused was not given any chance to explain the material against him, then the trial stands vitiated. In the light of the observation of the Apex Court, we are of the considered opinion that the evidence of the P.W - 13 (victim) cannot be considered, as no opportunity was given to the accused-appellant to explain the inculpatory statements made therein.

16. That apart, the article 'A', the knife, was seized in the presence of P. Ws No. 2 & 11. Both the witnesses have not supported the seizure panchnama at Exhibit - 4. The Investigating Officer was examined as P.W - 12. In his cross-examination, he has admitted that the article Exhibit-A, the knife, was not sent for forensic examination because the article Exhibit-A did not have the blood stain. The prosecution, therefore, miserably failed to connect the article 'A', the knife, with the alleged injury sustained by the victim. The evidence-on-record is, therefore, of no help to the prosecution.

17. This takes us to consider the last submission of Mr. N. Syngkon, learned counsel for the appellant-accused that the offence punishable under Section 326 is not proved. Section 326 of I.P.C speaks about voluntarily causing grievous hurt by dangerous weapons or means. The definition of Grievous hurt is given under Section 320 of I. P. C., which reads as follows: -

320. Grievous hurt. - The following kinds of hurt only are designated as "grievous": -

First. - Emasculation.

Secondly. - Permanent privation of the sight of either eye.

Thirdly. - Permanent privation of the hearing of either ear.

Fourthly. - Privation of any member of joint.

Fifthly. - Destruction or permanent impairing of the powers of any member or joint.

Sixthly. - Permanent disfiguration of the head or face.

Seventhly.- Fracture or dislocation of a bone or tooth.

Eighthly. - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

In this regard, reference must be made to the evidence of the doctor (P.W - 10). In her examination-in-chief she has stated that she cannot say whether the injury-in-question was simple or grievous as she does not have proper facility like x-ray, ultra sound and other medical equipment. In cross- examination, she specifically deposed that she could not ascertain that if the injury was grievous in nature. She further stated that she does not know by what object the injury was caused. There is nothing on record to show that the alleged hurt/injury sustained by the victim resulted in endangering his life or same caused severely body pain during the span of 20 (twenty) days or the victim was unable to follow the ordinary pursuit. Therefore, in this circumstances, we are of the clear opinion that the prosecution could not establish the commission of offence under Section 326 of the Indian Penal Code.

18. Taking the totality of the facts and circumstances of this case into consideration, we are of the considered view, that there is no material on record to support the prosecution case that the appellant committed the offence under Section 326 of the Indian Penal Code. The learned Sessions Judge, Nongpoh has committed gross error in relying upon the deposition of P.Ws No. 4, 5, 7 & 13 and terming the P.Ws. No. 4, 5 & 7 as eye-witnesses. The impugned judgement and order, therefore, cannot be sustained, same is quashed and set aside. The appellant is acquitted. The bail-bonds, if any, shall cancel. The concerned authorities are directed to release the appellant immediately, if he is not required in any case.

19. Crl. Appeal is accordingly allowed in above terms.

20. Registry is directed to return back the lower court case records to the concerned court.

Judge
(W. Diengdoh)

Judge
(R. More)

Meghalaya
08.02.2021
"Biswarup PS"