

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

Crl. A. 08 (AP) 2016

Manyia Ekke,
S/o late Gama Ekke,
Vill-Ekke, P.O.- Siyum,
P.S. Taliha, Upper Subansiri District,
Arunachal Pradesh.

.....Petitioner

-Versus-

1. The State of Arunachal Pradesh, represented through Public Prosecutor.

.....Respondents

-BEFORE-
THE HON'BLE MR. JUSTICE S.SERTO

| | |
|---------------------------|----------------------------------|
| For the Petitioner | : Mr. T. Bayor, Adv. |
| For the State Respondents | : Ms. M. Tang, learned Addl. PP. |
| Date of hearing | : 23-01-2018 |
| Date of judgment (Oral) | : 23-01-2018 |

JUDGMENT & ORDER (ORAL)

This is a criminal appeal filed under Section 374 of the Cr.P.C., 1973 directed against the judgment and order dated 21.06.2016 passed by the learned Addl. Sessions Judge, Eastern Zone, West Siang District, in Sessions Case No. 5438/2005 arising out of Daporijo P.S. Case No. 73/2004, wherein, the appellant was convicted under section 448 and 326 of IPC and sentenced to simple imprisonment of one year with a fine of Rs. 10,000/- in default to undergo further simple imprisonment of another two months and to simple imprisonment for three years and a fine of Rs. 20,000/- in default thereof to suffer simple imprisonment for another four months respectively for the offences punishable under the 2 (two) sections of IPC.

- 2.** Heard the learned counsel for the appellant Mr. Tadu Bayor and Ms. M. Tang learned additional PP appearing for the state of Arunachal Pradesh.
- 3.** The prosecution story which led to the trial, conviction and sentence of accused in the case stated above is that on 3.10.2004 at about 0300 hrs he went to

the rented house of his wife and inflicted multiple cut injuries on her body and on the body of her mother with a dao. After having inflicted injuries he went to the Police Station surrendered himself and gave his statement stating that he committed the crime because his wife refused to stay with him.

4. After the report of the appellant/convict FIR was registered and investigation was conducted and it was found that the offence punishable under section 448 and 307 of IPC were made out against the appellant/convict. Accordingly, charge sheet was submitted in the court of Judicial Magistrate First Class Daporijo on 14.05.2005 along with charge sheet, the I.O. of the case also submitted the confessional statement of the appellant recorded under Section 164 of Cr.P.C. The case was committed thereafter to the court of Additional Sessions Judge Basar, West Siang District. The learned Session Judge on 15.07.14 heard the charge and framed charge under section 448 and 307 of IPC against the appellant/convict. During trial, 4 (four) witnesses were examined. The appellant did not produce any defence witness. After the evidence were recorded, the case was heard and the learned Session Judge found the appellant guilty under section 448 and 426 of IPC. Thereafter, the prosecution and the appellant were heard on the quantum of the sentence to be awarded to the appellant and after hearing the appellant was sentenced to one year of simple imprisonment with a fine of Rs. 10,000/- in default to further undergo simple imprisonment of two months for the offence under section 448 of IPC and to three years simple imprisonment with fine of Rs. 20,000/- in default to simple imprisonment of another four months for the offences under section 326 of IPC.

5. Being aggrieved with the judgment and order, the appellant has come to this Court challenging both the judgment and order. In the mid of his submission, the learned counsel for the appellant submitted that he is not pursuing his appeal against the conviction anymore but he is praying for showing leniency to the appellant on the quantum of sentence in view of the advance age of the appellant which he stated is 74 years now and the children he has to look after. The learned counsel also brought to the notice of this court that the FIR was registered in the year 2004 but the trial started only in the year 2014 and concluded in the year 2016. The learned counsel in support of this submission cited the judgment of Supreme Court passed in the following cases:-

- (i) *Bishan Singh and Another-vs- State, reported in (2007) 13 SCC 65;*
- (ii) *Naib Singh-vs-State of Punjab, reported in (1986) 4 SCC 401;*
and
- (iii) *Kishan Chand and Another-vs-State of Punjab, reported in AIR 1994 SUPREME COURT 32.*

The contents of the paragraphs of the judgment stated above are reproduced herein below one after the other:-

(a) Para 14 of Bishan Singh and Another-vs-State;

“14. While imposing punishment in a case of this nature, the court is required to take into consideration the factors which may weigh with the court for taking a lenient view in the matter. The incident is of 1984. 23 years have elapsed. The appellants had all along remained on bail. It is not stated that they had ever misused the privilege of bail. The incident does not reflect any cruelty on their part or any mental depravity. They had been in custody for more than five months. In a situation of this nature, we are of the opinion that it may not be proper for this court to sent the accused persons back to prison. However, the injured had suffered pains at the hands of the appellant. We are, therefore, of the opinion that while their substantive sentence may be reduced to the period undergone, they should pay a fine of Rs. 15,000 (Rupees fifteen thousand) each; failing which they should undergo simple imprisonment for a period of one year each. Of the aforementioned amount is realized, a sum of Rs. 25,000 (Rupees twenty-five thousand) out of the sum, may be paid to the informant.

(b) Para 7 of Naib Singh-vs-State of Punjab;

7. Accordingly, the appeal fails and is dismissed. The judgment of the High Court convicting the appellant under Section 326 of Indian Penal Code is upheld. As to the sentence, we are inclined to take a lenient view. We are informed that the appellant is a teacher in a Government School. The circumstances brought out by the prosecution evidence show that he acted in the heat of the moment. Looking to the fact that the incident occurred on April 22, 1973, some 13 years back, we do not think it desirable to sent the appellant back to jail. We accordingly reduce the sentence of rigorous imprisonment for one year awarded by the High Court to

imprisonment till the rising of the court and pay a fine of Rs. 5000 or in default, to undergo rigorous imprisonment for a period of six months. the amount of fine shall be deposited in the Court of the Judicial Magistrate, First Class, Muktsar within a period of one month from today. The amount, if recovered, shall be paid to the complainant Darshan Singh by way of compensation.

© Para 5 of *Kishan Chand and Another-vs-State of Punjab*;

5. In the result the conviction of both the appellants under Section 302 read with 34, Indian Penal Code and sentence of imprisonment for life are set aside. Instead Gian Chand is convicted under S. 304, Part II, Indian Penal Code and is sentenced to seven years' rigorous imprisonment. We confirm the fine of Rs. 1,000/- and in default of payment of fine, he would further undergo rigorous imprisonment for six months. Kishan Chand is convicted under S. 326, Indian Penal Code. On the date of occurrence he was about 71 years and from the record we find that he has undergone imprisonment for quite some time. Therefore his sentence is reduced to the period already undergone. The fine is Rs. 500/- imposed by the courts below is confirmed and in default of payment of fine, he shall undergo rigorous imprisonment for three months. With this modification in the sentence, the appeals are partly allowed".

7. Miss M. Tang learned additional PP appearing on behalf of state of Arunachal Pradesh submitted that the crime committed by the appellant is serious in nature therefore, he deserves to undergo the sentence awarded by the learned Additional Sessions Judge, West Siang District, Basar. She also submitted that the learned Additional Session judge had already taken into account the age of the appellant but did not consider it sufficient enough reason for showing any leniency to the appellant on the quantum of the sentence. Therefore the same need not be interfered.

It is submitted by the learned counsel of the appellant that the appellant had undergone imprisonment for 108 days. Therefore the quantum of sentence maybe adjusted to that extent and the fine imposed earlier may be enhanced as this court may deem fit and proper.

8. Considering the fact that the appellant and the victim were husband and wife and had 2 children out of their marriage. It is not likely that the appellant would have committed the offence charged against him with intention. It is more likely that he had caused such injury due to momentary loss of control of his anger or due to

disappointment or frustration at that point of time. It is also revealed that the FIR copy was not exhibited during the trial. FIR is the very foundation of a criminal case. Therefore, its none exhibition makes the prosecution case less credible. There is no disputed on the fact that the appellant has attend the age of 74 years and he had to wait for 13 years to go through the trial of the case. Taking into account all these, I am not inclined to send back the appellant to jail to serve the rest of the sentence period awarded by the learned Addl. Session Judge. Therefore, the quantum's of sentences for both the offences are reduced to the period he had already undergone in imprisonment but the fine of Rs.30,000/- is enhanced by Rs.10,000/-. It appears from the record of the learned Addl. Sessions Judge that the sum of Rs.5,000/- has been already adjusted against the bail amount deposited by the appellant. Therefore, the amount left to be paid by the appellant is Rs.35,000/. He should deposit the same before the learned Addl. Sessions Judge within a period of 1 (one) month. As and when the amount is deposited, the same should be given to the victims, namely, Smti Yama Ekke (wife of the appellant) and Smti. Dengmang Singkom (Mother-in-law of the appellant) as compensation for the injuries suffered by them. In the event, he fail to deposit the amount in the time frame given, the appellant shall undergo simple imprisonment of 6 months.

With this, the petition is disposed of.

Send a copy of this judgment and order to the learned Addl. Sessions Judge, West Siang District, Basar, Arunachal Pradesh.

JUDGE

Victoria.