

Prabir Ranjan Deb Vs. State of Assam

Prabir Ranjan Deb Vs. State of Assam

SooperKanoon Citation : sooperkanoon.com/126632

Court : Guwahati

Decided On : Mar-18-1970

Judge : P.K. Goswami, C.J.

Appellant : Prabir Ranjan Deb

Respondent : State of Assam

Judgement :

P.K. Goswami, C.J.

1. This Criminal revision is directed against the judgment of conviction of the petitioner under Section 326, Indian Penal Code. He has been sentenced to rigorous imprisonment for six months and to pay a fine of Rs. 100/-, in default to suffer rigorous imprisonment for another month.

2. The prosecution case is that the accused is the nephew of the injured Hiranya Paul. The latter was proceeding towards his house when suddenly the accused came and stabbed him, causing a penetrating wound 1 1/2' x 1/2' x abdominal cavity through which the omentum came out. There was a linear scratch which might be caused by a fall as there is no suggestion that another blow was given. The injured immediately shouted for help and P. W. 4 came running. It was evening time and he constantly flashed his torch light and saw the accused running away with a dagger. Although the injured lost his consciousness for some time, he regained it near a Tilla where he was lying and was found by P. W. 2, 3

and 4. Not only P. W. 4 but also the injured gave out the name of the accused to those who arrived immediately. The learned Sessions Judge as well as the trying Magistrate were satisfied and, in my opinion rightly, held that the accused caused this injury to his maternal uncle without any provocation. There is no error in this conclusion.

3. Mr. Choudhury, the learned Counsel for the petitioner, has very fairly submitted that he could not invite me to consider the evidence in this case. He, however, draws my attention to a map which the learned Magistrate prepared while visiting the place of occurrence some time in November after recording of the evidence. There is, how-ever, no note of inspection as such although certain notes appear to be made on the map itself. It is true that the learned Magistrate has kept the inspection note in view while deciding the case while, however, the learned Sessions Judge did not give any importance to this document apart from merely mentioning that there was a local inspection. Section 539- B of the Code of Criminal Procedure authorises any Judge or Magistrate to visit the place of occurrence or any other place in order to appreciate the evidence. He is not required to rely upon any of his present observations of the occurrence which had taken place some time back, for the purpose of deciding the case. This local inspection is to be resorted to only for the purpose of appreciating the evidence already on the record. At any rate, I do not think that the accused is prejudiced by this absence of a regular note of local inspection nor by the fact that the learned Magistrate had relied upon his knowledge derived from the result of his personal observation of the place divorced from the evidence in deciding the case. Since the learned Sessions Judge was entirely relying upon the oral evidence of the prosecution witnesses, which he believed and on which he affirmed the conviction, it is not a case where the Court can say that the accused has been prejudiced for non-compliance with Section 539-B of the Code of Criminal Procedure.

4. Mr. Choudhury then appeals to this Court for a merciful sentence in view of the relationship of the parties and the admitted bad blood between them. Existence of animosity may, of course, be a point against the accused but since he is a youngman of about 22 years and at one stage prosecution even sought to implicate his father who must have been the moving spirit behind the youngman's

action, I am prepared to reduce the sentence to three months' rigorous imprisonment under Section 326, Indian Penal Code, and a sentence of fine of Rs. 50/, in default two months' rigorous imprisonment.

5. With the above modification in the sentence, the petition is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com